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DISCOURSE

ON THE

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CONDUCT

OF THE

GOVERNMENT

OF

GREAT-BRITAIN,

In respect to

NEUTRAL NATIONS,

During the

P R E S E N T W A R.

D U B L I N :

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M D C C L I X.



ON THE
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OF THE

Government of *Great-Britain.*

IT is unhappy for the Race of Mankind, that those Collective Bodies, into which it is divided, should be subject to the same Passions and Animosities, as the Individuals, of which They are composed, and not have, like them, some Visible Superior Tribunal, which might hear and compose their Dissensions: This might perhaps prevent those Appeals, which are too frequently made to the Sword, where the Events of War alone decide the Cause, and the Sentence, which passeth on the Transgressor, brings also to the injured Party a large Share of Misfortunes, in the Execution of it. The Welfare of Mankind however requires, that this necessary Evil should be confined within the narrowest Bounds; and that a Trial, where the Proceedings are so destructive, should be made as short, and as equitable, as the Nature of it will admit: It is the Duty therefore of those, who are not concerned in the Dispute, to be extremely attentive to their Conduct, that they may not thereby contribute to render the Contest unequal: As far as Man is concerned, it is Force alone, on which the Decision depends; to add therefore by any means to the Power of one Party, is, manifest Injustice to the Other, and besides is highly injurious to the rest of Mankind; since it necessarily tends to spread Discord

among Nations, and from a single Spark of Contention to light up a general Flame.

It might be hoped, that a Duty like this, enforced by such powerful Motives, would be universally observed; and that no private Inferior Interest could induce any Power to transgress it; if some little Profits, the Object of greedy Individuals, should perhaps arise from the Violation of it; can a Nation in general reap a Benefit, where public Justice receives a Wound? To act in opposition to This, in hopes of some present Advantage, is, to establish a dangerous Example, which may hereafter prove injurious to Ourselves; it is to untie the only Band, which holdeth Nations happily together, and to banish mutual Confidence from the various Communities of the World.

Such however hath been the mistaken Conduct of some Neutral States during the present War.—France consented to the Treaty of Aix-la-Chapelle, that She might the more securely pursue the Objects of her Ambition; and that under the Disguise of Peace, She might extend and fortify her Possessions in a Part of the World, where her Arms in time of open War had always, till then, been unsuccessful: For this Purpose She had artfully contrived, that the American Rights should not be determined by that Treaty, but be left to the Consideration of Commissaries, to whose Decisions She never meant to pay any Regard.—Canada was her Vulnerable Part: This therefore She resolved first to strengthen, and then to enter again with more Confidence into War; while We were employed in debating our Rights, She took more effectual Means to end the Contest in her Favour; She sent frequent Supplies to America; She seized and fortified the Passes and Navigable Rivers of that Country, drove the English from their Possessions, and built Forts on the Dominions of Great-Britain: When the Design was thus far advanced, England saw it in all its Terrors, and with Spirit determined to support her just Rights: Though forsaken now in her Distress by those Allies, who owe their Independency to her Protection, She feared not in such a Cause to stand alone against all
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the Efforts of France; She sent forth her Naval Strength, but the Enemy soon rendered the Attempts of that ineffectual, by resolving **never** to try its Force: In what manner was She now to employ it?—**ONE** only Object remained worthy of its Attention, and that was to destroy the Trade of the Enemy, and to intercept the Succours, which She sent to her Dominions in America.—Though this would not crush at once the Evil, it would stop at least the Sources that fed it, and might in the End contribute to induce the Enemy to consent to a reasonable Peace.

France endeavoured again to obviate this Stroke by her Policy. She took off the Tax of 50 Sous per Ton, which She always chuses to keep on Foreign Freightage: She opened even her American Ports, and admitted other Countries to that choice Part of her Commerce, which by her maritime Regulations She hath at other times so strictly reserved to herself. Neutral Nations seized at once on the Advantage, and opened to the Enemy new Channels for the Conveyance of those Riches, by which the War was to be nursed and protracted: Under the Banner of Friendship they thus served the Cause of the Adversary, whose Wealth secured by that protection would have passed safe and unmolested thro' our Fleets, if Britain again raising her Spirit, had not resolved that by this means her Naval Power should not be rendered useless, and seized on the Enemy's Property, which she found on board Neutral Ships.—It is well known however, that her Conduct in this respect hath not been Universally approved, and that some Neutral Nations think they have a Right to carry in their Vessels, unmolested, the Property of our Adversaries.—As I here differ with them in Sentiment, This is the Point on which I intend to discourse.

Great and wise Governments have always been jealous of National Glory: It is an active Principle, which properly cultivated, operates in Virtuous Actions thro' every Member of the State: To preserve this therefore in its Purity, is the Duty of every one, who loves his Country.—Can it then be wondered, that the Native of a Kingdom, always celebrated for its public Spirit,

and its upright Faith, at a time, when these are called in doubt, should interest himself in its Defence? No indecent Charges shall here be urged against other Countries, it is meant only to vindicate the Honour of our Own: It is to be lamented, that the Necessity of Affairs should at such a Season have given Occasion to this Dispute, particularly, with that Ancient Ally of England, who hath so often fought with her under the same Banner, in support of the just Rights and Privileges of Mankind: The Zeal of any Government to encourage the Industry of its People, is what a British Pen can never disapprove: The Principle is noble, and merits even our Applause; I only mean to shew, that the present Object of it is not just.

I shall therefore examine the Right, which Neutral Powers claim in this respect, first, according to the Law of Nations, that is, according to those Principles of Natural Law, which are relative to the Conduct of Nations, such as are approved by the Ablest Writers, and practised by States the most refined.—I shall then consider the Alterations, which have been made in this Right by those Treaties, which have been superadded to the Law of Nations, and which Communities, for their mutual Benefit, have established among themselves.

The Right of Protection then must have its Foundation in some Law, and, when considered in relation to any particular Case, it must be founded on that Law, by which the Interests of the Parties concerned are generally determined, and which hath Force in that Place, where the Right of Protection is claimed. Thus in the present Case, if Neutral Nations have any Right to protect the Property of the Enemy, it must take its Rise from those Laws which are the established Rules of Conduct between Nations, and particularly on that Element, where this Right is supposed to be exerted. No civil or municipal Institutions, and much less the Privileges arising from them, can here take place; they have no Force but under the Dominion of those, who agreed to their Establishment. The Question then is—How far according to the Law of Nations doth this
Right

Right of Protection extend?—To answer this clearly, we must observe, that Governments can have succeeded to no other Rights, but such as their respective Members enjoyed in a State of Individuality; and that one Nation is now to another, as it were in a State of Nature, that is, in the same Condition in which Man was to Man, before They entered into Society; the Right therefore of Protection, which Individuals would have enjoyed in such a Situation, is the same which Governments can claim at present:—An Individual then, in a State of Nature, would have had an undoubted Right to protect his own Person and Property against any Attack; —But if I am engaged in Contention with another, would He then have had a Right to protect Him against me?—most certainly not;—since He would thereby deprive me of a Right which the Law of Nature, for my own Security, would in such a Case give me, of seizing the Property of this my Enemy, and destroying his Person; if He thought my Conduct manifestly injurious, so as to call for general Resentment, He would on that account become my Enemy himself; but as long as he calls himself a Neuter, to act in this manner against me would be no less absurd than unjust:—Such therefore and no more is the Right of Protection which Governments enjoy at present in those Places, to which their own Dominion doth not extend: They have succeeded to the Rights only of their respective Members, and by consequence these alone they can protect.

But it will be asked,—From whence then arises the Right, which Governments always enjoy, of protecting the Property of the Enemy within the Precincts of their own Country?—It is a Consequence of the Right of Dominion; unless therefore their Dominion extends over the Ocean, the Right of Protection cannot there take place: Dominion gives a Right of enacting Laws, of establishing new Jurisdictions, and of making all, (whether its own Subjects or those of other Countries) submit to these, who come within the Pale of its Power: Here then the Trial, which the Law of Nations gives, is, as it were, superseded; and any Proceedings upon

it would of course be unjust; but as soon as you are out of the Verge of this particular Jurisdiction, the Laws thereof and the Privileges, which attend them, cease at once, and the general Laws of Nations again have their Force: Here the Property even of an Ally hath no other Protection than what these Laws allow it; being joined therefore to the Goods of an Enemy, it cannot communicate its Protection to these, since the same Law which gives Security to the first, allows you to seize and destroy the latter. These Reasonings are exemplified by a common Fact;—Within the Precincts of the Dominion of any Government, you are not at Liberty to search the Ships of any Country; but is not this Liberty universally and immemorially practised over all on the main Sea; and wherefore is this Search made, but that, according to the Law of Nations, all are here answerable for what They may convey?

There is something analogous to this in most Civil Governments. Few Countries are without some Places, which enjoy a Right of Protection from the general Laws of the State, such as Palaces, Houses of Religion, and the like; and this Right generally arises from some Pretence to an exclusive Jurisdiction; as long therefore as any particular Property remains within the Verge of these, however justly it may be the Object of the Law, it is not subject to the Power of it; but suppose it conveyed from hence into the public Roads, beyond the Precincts of this particular Palace, or Convent; the Protection it received would vanish at once, and the general Laws of the Community would fully then have force upon it. Thus the Protection, which Governments can give within their Dominions, extends not to the Sea: The Ocean is the public Road of the Universe, the Law of which is the Law of Nations, and all that pass thereon are subject to it, without either Privilege or Exemption.

If this manner of Reasoning should not clearly establish my Point, I can appeal in support of it to the ablest
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Writers on public Law, who will be found to have decided the Question unanimously in my favour.

And first I will produce the Testimony of that learned Native of Delft, who wrote so nobly on the Freedom of Navigation to serve his ungrateful Country. In one of the Passages which are now before me, it is remarkable, how much he labours to give the greatest Extent to the Rights of Commerce; and yet with all his laudable Byas to this favourite Point, he appears clearly to be of Opinion, that the Ship of a Neutral Nation cannot protect the Property of an Enemy: He even allows*, that such Property, being found on board any Vessel, affords a strong Presumption, that she also belongs to the Enemy, and that she might on that Ground be condemned, unless evident Proofs are produced to the contrary; and then he adds, "*Alioqui res ipsæ solæ in prædam veniunt*;" and speaking again in another Place on this Point, he says, that in case the Wrong done me by my Enemy is manifestly unjust, and that any one by affording him Succours should encourage him in his Enmity against me, "*jam non tantum civiliter tenebitur de damno, sed & Criminaliter, ut IS, qui Judici imminenti reum manifestum eximit*†." A fine and animated manner of Expression, which shews how clear the Opinion of this great Author was upon the Question.

To the Testimony of Grotius I shall add that of Bynkershoek, a Native also of Holland, and whose Sentiments, in point of maritime Jurisprudence, Barbeyrac often prefers even to those of the former; and what makes his Opinion at this Time of great Importance, is, that he wrote principally for the Use of the Courts and States of the United Provinces, and generally confirms what he advances, by their Judgments

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* Grotius de Jure Belli & Pacis, Lib. 3. cap. 6. Sec. 6. & in Notis.

† Grotius de Jure Belli & Pacis, Lib. 3. cap. 3. § 4.

and Resolutions. He speaks expressly in favour of my Point; "*Ratione consultâ,*" says he *, "*non sum qui videam, cur non liceret capere res Hostiles quamvis in Navi Amicâ repertas, id enim capio, quod hostium est, quodque Jure belli Victori cedit.*" He then assigns for his Opinion this Reason, that as it is lawful to stop on the Ocean any Vessel, though she carry the Colours of a Neutral Nation, and to examine by her Papers, to whom she really belongs; and, in case she appear to be the Property of an Enemy, to seize her as Lawful Prize; so he can see no Cause, why this Rule should not extend to the Effects, which any Ship may have on board; and, if the Goods of an Enemy should lie there concealed, why They also, by the Right of War, should not be taken and condemned: He even declares it to be his Opinion, that the Owner of the Neutral Vessel should, in such a Case, lose the Price of the Freight; a Severity which the English Courts of Admiralty never practise, where some particular Circumstance doth not require it.

I shall add to these the Opinion of Albericus Gentilis, esteemed the ablest Writer on National Jurisprudence, till Grotius bore the Palm from him; and his Fame in this respect was so great, that Philip the Third of Spain appointed him perpetual Advocate for his Subjects, in all Causes which they might have depending in the Courts of England. This Author states a Case, where the Tuscans had taken the Effects of the Turks, at that time their Enemies, which they found on board some English Ships; and he determines, that the Turkish Goods are Legal Prize, but that the Captor must pay the Freight to the English. "*Transseunt Res,*" says he †, "*cum suâ causâ, Victor succedit in locum Victi, tenetur Etruscus pro*
" *toto*

* Bynkershoek *Questionum Juris Publici*, Lib. 1. cap. 14.

† Albericus Gentilis *de Advocatione Hispanica*, Lib. 1. cap. 28.

"toto Naulo." The Property of the Enemy passeth to the Captor, but all its Consequences attend it; the Goods justly belong to him, but he must pay to the Freighter all which the Enemy would have paid, to whose Right he hath in every respect succeeded.

To enter particularly into the Sentiments of any more Writers on this Subject, would be equally tedious and unnecessary: It will be sufficient to mention the Names alone of such others, as are in favour of the Question.—Among these I find Heineccius *, no less famed for his Knowledge of Laws, than for his Learning in what are the best Expositors of Laws, the Antiquities of Governments.—Zouch †, who for many Years presided in the Courts of Admiralty of this Kingdom—Voet ‡,—Zuarius §,—and Loccennius ||, all of them Writers of Reputation, and whose Opinions are universally relied on, by all who treat on public Jurisprudence.

I might indeed have wholly omitted the Sentiments of these learned Individuals, since we shall find, that great Communities themselves have confirmed our Opinion, both by their Laws and by their Practice.—It will not be proper on this Occasion to look far back into the early Annals of the European States; when the Governments of these were yet in their Infancy, the Advantages of Commerce were but little understood, and of course the Rights of it were not sufficiently regarded; War was then too much the Season of Rapine, and they who entered into it, meant less to conquer than to plunder. As soon however as some better Order began to be introduced into these Affairs, it then became usual for each Party, at the Commencement of the War, to publish a Declaration, wherein

* Heineccius de Navibus ob vesturam vetitarum Mercium Commissis, cap. 2. § 9.

† Zouch de Judicio inter Gentes, Pars 2. § 8. cap. 6.

‡ Voet de Jure Militari, cap. 5. N. 21.

§ Zuarius de Usu Maris, Consil. 11. N. 6.

|| Loccenius de Jure Maritimo, Lib. 2. cap. 4. N. 11.

wherein he specified, what kind of Trade he would permit Neutral Nations to carry on with his Enemy; and the Regulations of these were sometimes attended to, and sometimes not, either as the Interest of the Party Neutral inclined him to submit to the Restraint, or as the Power of the Party Belligerent enabled him to enforce the Execution of it. True it is, that the Prohibitions, which these Declarations contain, are various, according to the Sentiments of the different Governments which made them; and, on that Account, they are perhaps too unsteady a Foundation, on which to establish a Right; we may draw however from them one powerful Inference in our Favour, that not one can be found amid all this Variety, that ever permitted Neutral Nations to protect the Property of the Enemy: This Branch of Freightage they all agree unanimously to prohibit.

The free States of Italy cultivated first the Interests of Commerce; before any Vessel had as yet passed the Cape of Good Hope, and a shorter Passage had been discovered to the East-Indies, Venice and Genoa drove the principal Trade of the World, and dispersed the Manufactures of Asia to the different Parts of Europe; it naturally followed, that these two commercial Republics soonest understood and defined the just Rights of Navigation: Their maritime Constitutions still remain collected in the *Consolato del Mare*; and the Reputation of these was so great, that as the Laws of Rhodes were once to the Romans, and the Laws of Oleron to the Western Parts of Europe, so these Italian Laws became of Force universally to all the Nations which border on the Mediterranean Sea: These have determined the Point expressly in our Favour. In one of them it is asserted, “ Se la Nave o Navilio, che pigliato sarà, fusse di amice e le Mercantie, che lui porterá, saranno d’inimici, lo Armiraglio, della nave o del navilio armato, puo forzare & costringere quel Patrone di quella Nave o di quel Navilio, che lui Pigliato haverá, che lui conquella sua Nave gli debba portare, quello, che di suoi inimici
“ sarà ;”

“fara *;” and it is afterwards added, that the Master of the Vessel must be paid for the Freightage of the Goods of the Enemy †.—And such was not only the constant Purport of their Laws; but the Practice of their Government was always conformable to it. Their Historian ‡ tells us, that in the War between the Venetians and the Genoese, the Ships of Grecians, who were Neuters, were always searched, and the Enemies who lay hid in them were taken out and made Prisoners.

It is unnecessary to dwell longer in giving a further Detail of the Conduct of every Nation in this respect; I will therefore confine myself to those who are most concerned in the present Dispute; and will shew, that as England claims no more at present, than what she always enjoyed, so France and Holland have constantly supported the same Opinion, whenever their Interest required it.

It was in the Reign of the first Edward, a Prince who thoroughly understood the Rights of his Crown, and had a Spirit equal to the Support of them, that Philip the Fair of France, being engaged in a War with the Duke of Burgundy, the French Admiral took the Ships of several Neutral Nations, which were passing through the British Channel into the Ports of Flanders: Great Complaints were made on this head, and Commissioners were appointed to examine into the Conduct of the Admiral; a Libel was there presented against him by almost every trading Nation of Europe; the Record of § this is still remaining; and if Neutral Nations had at that time pretended to enjoy the Right of pro-

* “If the Ship or Vessel, which shall be taken, belong to an Ally, and the Merchandise, which she has on board, belong to an Enemy, the Captain of the armed Ship may force or constrain the Master of the Ship or Vessel, which he has taken, to carry into some Port for his Account, the Effects of his Enemy which are on board.”

† Il Consolato del Mare. c. 273.

‡ Nicep. Grogoras, Lib. 9.

§ Sir Edward Coke's Fourth Inst. chap. 22.

protecting the Property of the Enemy, and that the Effects, which they carried on board their Ships, could in no Case, except in that of contraband, be made lawful Prize, we might well expect that this Right would here have been claimed and asserted; Fear could not in this Case have prevented it; for all the World, except France, was on one Side of the Question; but the Record contains no such Claim: The Injured demand their Right on a different Principle, because the Ships were taken on those Seas, “ where the Kings of England (saith the Record) have Time out of Mind “ been in peaceable Possession of the Sovereign Lordship, with Power of appointing Laws, of prohibiting the Use of Arms, of giving Protection, as Occasion should require, and appointing all Things necessary for the maintaining Peace, Justice, and Equity among all, as well Foreigners as Natives, who “ navigate those Seas *.” Here then the Right of Protection is placed on that Basis, on which alone it can properly be founded, the Right of Dominion; no other Pretence is offered; and if I may be allowed to sum up the Evidence, as their Names are written in the Record, “ Genuie, Cataloigne, Espagne, Alemaine, Scotland, Hoyland, Frise, Denmark, Norway, & plufours aultres lieux del Empier,” all join here in asserting the Principle on which I first established my Argument.

The Annals of Edward the Third afford still other Facts in favour of my Opinion: This Prince added to his military Accomplishments great Sagacity in the Science of Laws, and uncommon Attention to the commercial Interests of his Kingdoms: In the second Year of his Reign he confirmed the Charter of Privileges, which some of his Predecessors had before granted to foreign Merchants, and particularly to those of the Hanse-Towns†, who were at that time the greatest Freighters of the Western Parts of Europe: This Instrument may well

* See all this more fully stated in the Record.

† Rymer's Fœdera, tom. 4. p. 361,

well be considered as a sort of maritime Regulation, by which England meant to direct her Conduct at that time in Affairs of this Nature: In this, Liberty of Navigation is fully confirmed; foreign Merchants are allowed to carry their Goods, whether purchased within the Kingdom, or without, "*Quocunque voluerint*;" but with this Exception, "*præterquam ad Terras notiorum & manifestorum hostium Regni nostri* *;" and some Offences being afterwards committed against this Charter in the succeeding Wars, it was again renewed in the same manner in the sixth Year of this Reign: In both these Instances the Exception is express, that no Trade whatsoever should be permitted with the Enemy; but this good King, perhaps through a Principle of Justice, and his ardent Love to Commerce, seems to have practised this Right with more Moderation, that is, in much the same manner, in which the Government of England claims it at present: For in his Wars with Scotland, some Ships of Great-Yarmouth having taken several Vessels belonging to the Burgeses of the Town of Bruges, "*Prætendentes bona in iisdem existentia fuisse hominum de Scotiâ*;" he directed his Precept to the Sheriff of Norfolk †, commanding him to set at Liberty, and to cause full Restitution to be made of the Ships, and of such of the Goods as belonged to the Merchants of Bruges, and that he should detain only that Part of the Cargo which was the Property of the Scotch, his Enemies. We find also, that when Queen Elizabeth was engaged in War with Spain, she seized several Vessels of the Hanse-Towns, which were entering into the Port of Lisbon; and she urged, among other Arguments, the Charter above-mentioned in defence of her Conduct: She was in this respect so satisfied of her Right, that the Threats of the German Empire and other neutral Powers could not oblige her to relinquish it; and though she might perhaps on this Occasion give too great Extent to this Right;

* Rymer's *Fœdera*, tom. 4. p. 516.

† Ibid. p. 328.

Right ; yet it is remarkable, that Monsieur de Thou, who was himself a great Lawyer, and had long sat in the first Court of Judicature in France, even when he blames the Conduct of the Queen in this Affair, passeth his Censure upon it not as defective in Justice, but only in Policy . “ In tam alieno tempore,” says he *, “ rerum prudentiores existimabant, imprudenter factum esse a Reginâ & ab Anglis.”

We have as yet mentioned the Conduct alone of those English Princes, who knew how to assert their Rights, and who ruled their People with Glory ; but we shall find that even under a weaker Government, and in a later Period, this Right of seizing the Property of the Enemy found on board neutral Ships, hath been fully claimed and practised : When Villiers Duke of Buckingham presided over the Naval Affairs of England, and to gratify his own private Resentments had engaged his Country in a War against Spain, the British Fleet under Pennington took several French Vessels, to the Number of between Thirty and Forty, which had Spanish Effects on board ; they were brought into the Ports of England, and our Courts of Admiralty condemned the Goods of the Spaniards as Legal Prize, but ordered the Vessels of the French to be released, and the Freightage to be paid to them. This Conduct was avowed by the Court of England, and a full Representation of it transmitted by the Lord High-Admiral to the Administration of France : About fifteen Years after this, when the French themselves were at War with Spain, the Navy of France took a great many English Ships, which were laden with the Property of Spaniards ; and their Courts of Admiralty condemned not only the Enemy's Effects, but the English Ships which conveyed them : The Earl of Leicester, then Ambassador in France, made great Complaints on this Head ; he was answered, that the English always acted in the same manner ; and this Reply being transmitted to the Earl of Northumberland,

* Thuanus, lib. 96.

land, at that time Lord High-Admiral, he consulted upon it Sir Henry Martin, the best English Civilian of that Age, and the most versed in maritime Jurisdiction ; and by his Advice he returned to Lord Leicester the following Answer, which at the same time proves the constant Opinion, and shews the Moderation of the British Admiralty on this Point : “ That,” says he *, “ which is alledged by the French to be practised in “ our Court of Admiralty, is absolutely denied ; and “ that neither the Law nor Practice hath ever been “ here to confiscate the Goods of Friends for having “ Enemies Goods among them : We are so far from “ doing any such Act of Injustice, as when in time of “ War we have met with any such Prizes, the Freight “ hath always been paid by the Taker, for those Ene- “ mies Goods that he took, and those that belonged “ unto Friends were duly restored to them.”

Thus much may suffice to shew the Conduct of the People of England :—History will also prove to us, that Holland hath always exerted the same Right.—At the Beginning almost of that War, which the United Provinces sustained in support of their Liberties, and even before their Sovereignty was as yet fully established, the People of Zealand scrupled not to carry into their Ports all such Neutral Vessels † as were conveying the Effects of the Enemy, under pretended Names, from Flanders into Spain ; and the Courts of Admiralty of that Province adjudged the Spanish Property to be Legal Prize ; and though they released the Neutral Ships, they made them no Compensation for the Freightage ; among these there were some English Vessels ; and Queen Elizabeth, angry that so young a State, and one which had placed itself under her Protection, should in any Degree interrupt the Com-

* The Sidney Papers, Algernon Earl of Northumberland to Robert Earl of Leicester, Nov. 5, 1640.

† Historia Belgica Metereni, Lib. 5. Cambden, Anno 1575. Zouch de Judicio inter Gentes Pars, § 8. c. 6.

Commerce of her People at first shewed the Effects of her Repentment, by seizing their Ships, and imprisoning their Merchants; the Zealanders upon this made Reprisals; several English Vessels were detained, and their Commanders put under Confinement: To endeavour at some Settlement of this Affair, the Queen sent over to Holland Mr. Robert Beal her Secretary; and for the same Purpose the Prince of Orange dispatched a Minister to London; by these means the Dispute at last was compromised; the Ships and the Prisoners were on both Sides released; but the Queen never obtained the Restitution of the Enemies Goods, which were taken on board the Vessels of her Subjects: This Fact is worthy of Observation, not only, as it relates to the Conduct of Holland, but as it shews, how far a Princess thought herself obliged in Equity to yield, whom Historians have always described as positive in her Temper, and, whenever her Right was concerned, of a very tenacious Disposition.

Holland, whenever She was engaged in a War, almost constantly pursued the same Conduct: She sometimes even prohibited the Commerce of Neutral Nations beyond all Justice and Moderation. Charles the Second, in a Letter to the States General, of October 4, 1666, charges them with a remarkable Violence of this Nature: Being at War with some Asiatic Princes in the East-Indies, They seized all the Ships and Goods of the English Merchants, which were trading to those Countries; and the Dutch Governors scrupled not openly to profess in their Declarations, “ Qu’ ayant depuis peu annoncé la Guerre aux Princes, avec qui ils avoient dessein de trafiquer, cette Guerre devoit par consequent leur interdire tout Commerce avec les dits Princes †.”

I omit citing many other Instances of their Conduct in this particular, lest I should appear tedious especially as one Fact still remains, which is alone sufficient
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† Charles the Second’s Letter to the States General, Oct. 4, 1666.

to evince the Opinion of Holland on this Point ; and the which I the rather chuse to mention, as it happened even after the Dutch had by their Negotiations endeavoured to establish, as a general Maxim among Nations, that the Goods of an Enemy under a Neutral Banner should pass unmolested.—At the Commencement of that War, which broke out immediately after the Revolution, when the first Grand Alliance was formed against France, Holland entered into a Convention * with England to prohibit totally the Commerce of Neutral Powers with the Enemy: In the Preamble of this, They assign publicly their Reasons for it; they say, “ that having declared War “ against the most Christian King, it behoves them to “ do as much Damage as possible, to the common Ene- “ my, in order to bring him to agree to such Con- “ ditions, as may restore the Repose of Christendom ; “ and that for this End it was necessary to interrupt “ all Trade and Commerce with the Subjects of the “ said King ; and that to effect this, They had order- “ ed the Fleets to block up all the Ports and Havens “ of France ;” and afterwards, in the Second and Third Articles of this Convention, it is agreed, “ that “ They would take any Vessel, whatever King or “ State it may belong to, that shall be found sailing “ into or out of the Ports of France, and condemn “ both Vessel and Merchandise as legal Prize ; and “ that this Resolution should be notified to all Neu- “ tral States.” Such therefore was at this Time the avowed Opinion of Holland, and England was induced to join with Her in this Convention, exceeding thereby those Bounds of Equity and Moderation, which She had almost always practised in this point before, and which She will, I hope, most faithfully observe for the Future. The Northern Crowns, who were particularly affected by this Prohibition, contended very vehemently against it: In answer to this Objection were urged, the Circumstances of Affairs, the Danger
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* Convention concluded at London, August 22, 1689.

of Europe, and the mighty Strength of that Ambitious Power; which, if some extraordinary Effort was not made, would bring Mankind under its Subjection. It is remarkable, that Puffendorf *, who owed his Fortune and Employments to one of these Northern Crowns, was of Opinion in this Case against them; and thought that the Convention might be justified. It is not meant here at present, either to censure or to commend it: Circumstances may sometimes make a Thing to be lawful, which, considered by itself, would be unjust; but such Times are truly unhappy, when Necessity must be pleaded in Support of a Right.

It remains, that I now enquire into the Conduct of France: My Proofs † on this Head will be clear; They are indeed nothing less than the Public Laws of that Kingdom: By some very old French Ordinances it is declared, not only, that the Enemy's Goods shall be adjudged to be Lawful Prize, but that the Neutral Vessel which carries them, or the Property of any Ally, which shall be joined with them, shall be joined also in the Condemnation. It has always been a Maxim of the Courts of Maritime Jurisdiction of France, "*Que la Robe d'Ami confisque celle d'Enemie;*" and so clear were They in this Opinion, that the Laws, which established it, were repeatedly enacted in the Reigns of two of their Kings, Francis I. and Henry III.—That the Practice of the French Marine hath in this particular been conformable to their Laws, may be proved by a Thousand Instances: I shall select one upon the Authority of a Minister of Holland, which will shew, what their Conduct was in that Spanish War, which preceded the Pyrenean Treaty. In a Letter of Monsieur Boreel from Paris, to Monsieur De Wit, December 26th, 1653, "*On tient ici,*" says He, "*pour Maxime favorable a leurs Interests, que leurs*"
" Enemies

* See a Letter of Puffendorf in Jo. Groningii Bibliotheca Universalis Librorum Juridicorum, p. 105.

† See the Ordinances of France, Francis I. 1543. c. 4. 2 Henry III. 1584. c. 69.

“ *Enemies ne doivent recevoir ni Defense ni Service*
 “ *des Sujets de leur H. H. P. P. en transportant de*
 “ *chez Eux quelques Merchandises ou Commodités*
 “ *ou d'autres, qui seroient pour le Compte de l'En-*
 “ *emie, sous peine, au cas qu' Ils les trouvent dans les*
 “ *Batiments Hollandois, qu' Ils seront de bonne Prise,*
 “ *& qu'on les puisse enlever des dits Batiments & les*
 “ *confisquer.*”

But it is not the Old Laws of France alone, that thus determine this Point, their more Modern Regulations confirm it: One of the last and greatest Services, which Colbert performed to his Country, was the Establishment of a System of Naval Laws, the wisest and best digested, which the Spirit of Legislation hath ever yet produced; it is observable, that although the Ordinance, which contains these Laws, was registered in 1681, several Years subsequent to those Treaties, by which France agreed, that Neutral Vessels should protect the Property of an Enemy, yet it pays no Attention to them, and establishes the contrary Doctrine. This proves how little regard France always shewed to that Article,—The Words of the Ordinance expressly condemn not only the Enemy's Goods, but the Neutral Ship, which carries them: “ All Ships (saith the Law *) which have Goods on board, that belong “ to the Enemy, shall be good Prize.”

Let us now look back, on what has been said: The Deduction, which I have made, hath, I fear, been tedious; but the Importance of the Subject by Force led me into it:—I flatter myself however, it has appeared, that Reason, Authority, and Practice, all join to support the Cause I defend:—By Reason, I have endeavoured to trace out those Principles, on which this Right of Capture is grounded;—And to give that Weight to my own Sentiments, which of themselves they would not deserve, I have added the Authorities of the Ablest Writers on this Subject;—And lastly, I have entered largely into the Conduct of Nations, that
 I might

* Naval Ordinance of 1681, Title 9, Artic. 7.

I might not only lay thereby a broader Foundation for this Right, but that I might the more fully illustrate, by the extravagant Pretensions of other States in this Respect, the present Moderation of England: No Age or Country ever gave a greater Extent to the Commerce of Neutral Nations, and we have seen that most in the same Circumstances have confined it within much narrower Bounds.

There remains still however one Objection to what has been said, and that of so plausible Cast, that I cannot leave it without an Answer: It has been pretended, that the Liberty of Navigation is destroyed by Means of these Captures, and that a violent Restraint hath been put on the Lawful Industry of Mankind. The Liberty of Navigation in fair Construction, can mean no more than the Right of carrying to any Mart unmolested, the Product of one's own Country or Labour, and bringing back the Emoluments of it: But can it be Lawful, that you should extend this Right to my Detriment; and when it was meant only for your own Advantage, that you should exert it in the Cause of my Enemy? Each Man hath a right to perform certain Actions, but if the Destruction of another should follow from them, would not this be a just Reason of Restraint? The Rights of Mankind admit of different Degrees, and whenever two of these come into Competition, the lowest in the Scale must always give place to the Higher;—but You will say, that You have a Profit in doing this; if however it is otherwise unjust, will that Consideration convert it into a Right?—If you mean, that your own Commerce ought to be Free, the Right is not in the least denied you; but if under this Disguise you intend to convey Freedom to the Commerce of the Enemy, what Policy or what Justice can require it? What can Neutral Nations desire more, than to remain amid the Ravages of War in the same happy Circumstances, which the Tranquillity of Peace would have afforded them? But can any Right from hence arise, that you should take Occasion from the War itself to constitute a new Species of Traffic, which in Peace you never enjoyed, and which the

the Necessity of One Party is obliged to grant you, to the Detriment, perhaps Destruction, of the Other? If this Right was admitted, it would become the Interest of all Commercial States to promote Dissention among their Neighbours; the Quarrels of others would be a Harvest to Themselves; and from the Contentions of others They would gather Wealth and Power.—But after all, the Rights of Commerce are not the real Cause of this Dispute; and Liberty of Navigation is only a fair Pretence, which Ambition hath thought fit to hold forth, to interest the Trading States of the World in its Cause, and to draw down their Indignation upon England; This is not the first time, that a Deceit, like this, hath been practised: When the Power of Spain was at its greatest Height, and Elizabeth wisely contended against the mighty Designs of Philip, the Capture of some Vessels belonging to the Hanse Towns gave Occasion to a Contest of this Nature: But it was the Emissaries of Philip, that then blew up the Flame, and pretending a Love to Commerce, promoted the Ambitious Projects of their Master: The Queen of England published an Apology for her Conduct, and This was answered in a virulent and abusive Manner, not from any of the Hanse Towns, but from Antwerp, a City under the Dominion of Spain, and it seemed to be written (says Thuanus) “*per hominem Philippippi Partibus addictum, non tam pro libertate Navigationis et in Germanorum Causâ defendendâ, quam in Hispanorum Gratiam, & ad Reginæ Nomen proscindendum:*” The Interests of Commerce were the pretended Cause of this Dispute, but the real Cause was the Interest of Philip; the pretended Design was to preserve the Liberty of Navigation, but the real End was to serve the Cause of Ambition, and to destroy the Government of England;—This Case need not be compared with our own at present; The Resemblance is too Obvious.

Here then we might rest our Cause, if the Law of Nations was the only Foundation, on which this Point could be argued. But the Bands of Equity having been

been found alone too weak to hold the Nations of the World to their Duty; their Interest taught them to renew and confirm these by Contracts among themselves, and frequently to add thereto certain mutual Advantages, greater than what the Law of Nations singly would have allowed them:—Let Us consider therefore, what Influence These may have in the present Case;—Whatever they are, I mean to give them all the Force, which Reason or Justice can require: If our Ancestors have betrayed the Interest of their Country in granting any Privileges of this Nature, We, who have succeeded to their Rights, are bound to abide by their Concessions; It is the Happiness of Great Kingdoms, whose Power is equal to the Support of their own Independency, to be able to act upon those Principles, which Necessity hath often forced little States unhappily to abandon; Those scandalous Maxims of Policy, which have brought Disgrace both on the Name and the Profession, took their Rise from the Conduct of the little Principalities of Italy, when distressed by the successive Invasions, which France and Spain made upon them, They broke or conformed to their Leagues, as their own Security obliged them; and their refined Shifts and Evasions formed into Systems by the Able Doctors of their Councils, have composed that Science, which the World hath called Politics, a Science of Fraud and Deceit, by which Individuals would be ashamed to profess; as if there could be no Morality among Nations, and that Mankind, being formed into Civil Societies, and collectively considered, were set free from all Rules of Honour and Virtue:—Maxims like these I mean to avoid; To follow them would bring Dishonour on my Country.

It must then be allowed, that there are Articles in some of our Maritime Treaties with other Nations, which have stipulated that, “All, which shall be found
 “on board the Vessels, belonging to the Subjects of
 “those Countries, shall be accounted Clear and Free,
 “although the whole Lading or any Part thereof
 “shall, by just Title of Property, belong to the Enemies of Great-Britain;” Such an Article is inserted

ed in those Maritime Treaties, which Great-Britain hath made with France * and Holland †, and in those only : It has indeed by some been supposed, that the Subjects of the Crown of Spain have a Right to enjoy a Privilege of the same Nature ; Certain however it is that no such Article, as that above-mentioned, can be found in the Maritime Treaties between that Country and Great-Britain, and particularly in that of Madrid of 1667, which is the principal Maritime Treaty, at present in Force between the two Kingdoms ; but as a Mistake in this respect may possibly have arisen from a false Interpretation of two Articles in the Treaty of Madrid, which declare in general ‡, that “ the Subjects of the two Crowns respectively shall have Liberty to traffic throughout all Countries, cultivating Peace, Amity, or Neutrality with either of Them, and that the said Liberty shall in no wise be interrupted by any Hinderance or Disturbance whatsoever, by reason of any Hostility, which may be between either of the said Crowns and any other Kingdoms ;” and as the Liberty here stipulated may by some erroneously be imagined to extend so far, as to grant a Right to carry freely the effects of the Enemy ; it will be necessary here to remove this Error, and to stop a little to shew the true Design and Meaning of these Articles.

It cannot, I think, be doubted, that, according to those Principles of Natural Equity, which constitute the Law of Nations, the People of every Country must always have a Right to trade in general to the Ports of any State, though it may happen to be engaged in War with another, provided it be with their own Merchandise, or on their own Account ; and, that

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under

* Treaty between Great-Britain and France, 24th February, 1677. Art. 8. N^o. 1. in the Appendix.

† Treaty between Great-Britain and Holland, 1st of December, 1674. Art. 8. N^o. 2. in the Appendix.

‡ Treaty of Madrid, 1667. Art. 21 and 22. N^o. 3. Append.

under this Pretence, They do not attempt to screen from one Party the Effects of the other; and, on condition also, that They carry not to either of Them any Implements of War, or whatever else, according to the Nature of their respective Situations, or the Circumstances of the Case, may be necessary to them for their Defence. As clear as this Point may be, it has sufficiently appeared by the Facts deduced above, that amid the Irregularities of War, the Rules of Equity, in this respect, were not always enough regarded; and that many Governments, in time of War, have often most licentiously disturbed, and sometimes prohibited totally, the Commerce of Neutral Nations with their Enemies: About the middle therefore of the last Century, when the Commercial Regulations, which at present subsist between the European Powers, first began to be formed, it became absolutely necessary to call back the Attention of Governments to those Principles of Natural Right, from whence They had strayed; and to fix, and determine, what was the Law of Nations, by the Articles of their respective Treaties: For this Purpose, the Negotiators of that Age, inserted in their Commercial Regulations, Articles * to the same Purport, as Those above-mentioned, asserting, in general, a Right to trade unmolested with the Enemies of each other; and these They usually placed among those Articles of general Import, which are commonly first laid down in Treaties, as the Basis, on which the subsequent Stipulations are founded: The Rule therefore of Equity in this Case being thus defined, They came afterwards to erect upon it such Privileges, as that Rule alone would not have allowed them; and among the rest, some Nations, as their Interest prompted them, granted mutually to each other, by new and express Articles,

* Treaty of Commerce between France and Holland, 1662. Art. 26 and 27. Treaty of Commerce between England and Holland, Feb. 17, 1668. Art. 1 and 2. Treaty of Commerce between England and Holland, Dec. 1, 1674. Art. 1 and 2. Treaty of Commerce between England and France, Feb. 24, 1677. Art. 1 and 2.

ticles, the Right of carrying freely the Property of their respective Enemies. These last Articles therefore must be considered as wholly distinct in their Nature from those before-mentioned, and in their Meaning totally different: The first are in Affirmance of an old Rule; the last create a new Privilege;—Those only confirm a Right, which was determined by the Law of Nations before; these make an Exception to that Law:—If they both imply the same Sense, why are both so often found inserted in the same Treaties *? Would the Repetition in such a Case have been necessary? and to what Purpose were new Articles added to grant a Privilege, which was already included in the Terms of the preceding? The same Exception also of Contraband Goods, is again repeated in the last Case, as well as in the former; and shews clearly, that the Property, which is the Object of the Exception in the different Articles, must likewise in its Nature be different; the one relates to the ordinary Means of Traffic, which every Nation enjoys, its own Produce or Property; the other to the Property of the Enemy.

But this Point is still more clearly explained by the Assistance of other Treaties, where Articles of the same Force, as the 21st and 22d of the Treaty of Madrid, are inserted, and the Intention of them fully made appear from the subsequent Parts of the same Treaties.—In the Treaty of Commerce between Great-Britain and Sweden, of the 21st of October, 661, it is stipulated, by the 11th Article, that “it is by no Means to be understood, that the Subjects of one Confederate, who is not a Party in a War, shall be restrained in their Liberty of Trade and Navigation with the Enemies of the other Confederate, who is involved in such War:” And then in the Article, which immediately follows, the Meaning of these Words become manifest beyond a Doubt; it is there so far from being supposed, that the Liberty here granted can be so interpreted, as to imply a Right of conveying the

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Effects

* See the Treaties mentioned in the last Note.

Effects of an Enemy that the very attempt to practise it under Favour of this Liberty, is there called a * "Fraud;" and as a "most heinous Crime," is ordered "to be most severely punished;" and to prevent any Collusion in this respect, the Vessels of both Parties are required to be furnished with Passports, "specifying, of what Nation the Proprietors are, to "whom the Effects on board them belong."—And in the Treaty of Commerce between Great-Britain and Denmark, of the 29th of November, 1669, a Right of Free Trade with the Enemy is stipulated in the 16th Article; and afterwards, by the 20th Article, the Extent of this Right is made apparent: Here the Means are set down to prevent the Designs of those, who, under Favour of this Stipulation, should attempt to protect the Effects of the Enemy; and the Illegality of such a Practice being supposed, as not necessary to be expressed, the Article then declares, "but lest this "Liberty of Navigation and Passage for one Ally, "might, during a War, which the other may be "engaged in, by Sea or Land, with any other State, "be of Prejudice to such other Ally; and the Goods "belonging to the Enemy be fraudulently concealed, "under the colourable Pretence of their being in "Amity together; to prevent therefore all Fraud of "that sort, all Ships shall be furnished with Passports;" the Form of which is there set down, and is the same as that mentioned above.—From these Treaties then it manifestly appears, that by a general Stipulation in favour of Trade with the Enemy of another Power, Negotiators never intended to imply a Right, to carry freely the Effects of that Enemy; but that to establish such a Right, it is necessary to have it expressly mentioned. The 21st and 22d Articles therefore of the Treaty of Madrid, in which Liberty of Traffic to the Countries of the Enemies of Great-Britain is thus in general stipulated, can be explained to

* See Treaty of Commerce between Great-Britain and Sweden, Oct. 21, 1661. Art. 12, and Passport.

to grant to the Subjects of the Crown of Spain no other Right but that of carrying on without any injurious "Molestation" or "Disturbance," such Traffic, as would otherwise be Legal according to the Law of Nations; and by this Law, in Time of War, it never could be Legal to protect the Effects of an Enemy;—a Privilege like this Great-Britain hath no where consented to grant, but in her Commercial Treaties with France and Holland: The first of These is put an end to by the present War; it remains therefore that I now discourse only on this Privilege, as it is stipulated in the British Treaties with Holland; and I propose to shew that here also it is extinct.—But to give a fuller View of my Subject, and to shew the Origin and Intention of this Privilege, it will be necessary to enter a little into the History of it, and to relate the Manner, in which the Article, that grants it, was first admitted into Treaties.

When the United Provinces had put an End, by the Treaty of Munster, to that long War, which They had so nobly maintained in Support of their Liberties, and had happily crowned their Labours by obtaining a full Acknowledgment of their Sovereignty: Delivered from the Cares of War, They wisely turned their Thoughts towards the Arts of Peace: After long Contentions among themselves, their Commercial Provinces had at length obtained the greatest Lead in the State; the Interest of Trade was of course the Principal Object of their Councils; Their Armies were reduced; All, who favoured War, were no longer in Credit; and the Views of their Ministers terminated chiefly in giving Permanence to that Extensive Traffic, which had supported them through all their Distresses, and to the Effects of which They principally attributed all their Power and Freedom.

They were indeed at this Time so fully Masters of almost all the Commerce of the World; that They had little else to do, but to preserve the Possession of it: The Public was on this Occasion

amused with a new Species of Policy, the Offspring rather of Avarice, than Ambition, desirous of keeping the rest of Mankind in Indolence, that it might more fully reap the Fruits of its own Industry; where Wealth was at least the first Object in View, though in the End it might be accompanied by its Usual Attendant, Power: The Arts which they practised to preserve their Fisheries, and to secure to themselves alone the Trade of the Asiatic Spices, are well known, and not at present to our Purpose: They urged loudly the Freedom of Navigation, Till they had made it free indeed for Themselves; but they have been charged with practising a different Doctrine on the other Side of the Line, to what they professed on this; and with seeking to establish an Exclusive Trade on those very Seas, whose Freedom from Papal Grants, and Spanish Pretensions, the Pen of their Grotius had so ably defended.

There was however another Species of Commerce, which demanded their Attention even more than either of the former: as it was not only a profitable Branch of Traffic in itself, but as it greatly tended to the Security of the rest, by being the Principal Basis of their Naval Power: This was the Trade of Freightage, or the Carrying Trade, the Subject of our present Discourse.—To understand their Views in this Respect, We must first take Notice of the Foundation, on which their Policy was built: They had succeeded to the Hanseatic Traders, in becoming the Carriers of the World: Long Possession had therefore furnished them with great Numbers of Sailors and Ships; and to these they added, uncommon Parsimony, and Industry, the natural Endowments of their People; these made them contented with small Profits, and enabled them to carry the Manufactures of each Country, even cheaper, than the Natives of it themselves: With such happy Circumstances in their Favour, They were sure of making this Branch of Trade wholly and perpetually their own, if they could, by their Negotiations and Policy, establish two Points. —The first was, that no Nation should grant to its
own

own Natives any Privileges in relation to Freightage, which the People of Holland should not equally enjoy. — And as the Consequences of War would otherwise frequently interrupt the Course of this Traffic, They laboured to obtain, as their second Point, that whenever any other Nation was engaged in War, They might then enjoy, as Neuters, the Right of protecting the Property of its Enemies. — These Points, once obtained, would open a larger Field on which their Industry might exert itself, than what They could otherwise of right pretend to enjoy: They were wise, however in endeavouring to obtain it: No Nation besides themselves had more Shipping than what was equal to the Carriage of their own Manufactures; They alone therefore could carry on the Freightage of other Countries, and largely reap, when their Neighbours were at War, the Advantages proposed.

The Regency of Holland laboured with great Perseverance for the Establishment of these two Points: Their Great Minister De Witt *, filled all his Instructions and Dispatches with every Argument and Motive, which his active Mind could invent, in support of these favourite Maxims: They were willing to give up any Temporary Advantage to gain that, which, once acquired, would prove for Ages an overflowing Spring of Wealth. By their Negotiations They first endeavoured to induce France to comply with their Desires in these Respects; but Here they were a long while unsuccessful: In opposition to the first Point of their Policy, Fouquet while He was at the Head of the French Marine and Finances, established the Tax of 50 Sous per Ton on all Foreign Shipping; and endeavoured thereby to encourage and augment the Freightage of his own Country; and when, upon his Disgrace, Colbert succeeded to his Employments, this Tax of 50 Sous was almost the only Part of the former's Policy, which the

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latter

* Lettres de Monsieur de Witt passim.

latter thought fit to adopt. It is amazing, with what Zeal and Application the Ministers of Holland contended for the Abolition of it: France at length relaxed her Severity on this Head, not so much to favour the Trade of the Dutch, as in Compliance with the Interests of her own. Colbert's great Schemes to improve the Manufactures of his Country had met with better Success, than his Plans for the Augmentation of its Marine; and the frequent Wars, in which his Ambitious Master involved his Kingdoms, gave repeated Checks to the Freightage of his People. France therefore at last found it necessary to give a larger Vent to her Manufactures, by opening her Ports to Foreign Vessels; and for this Purpose She took off the Tax of 50 Sous, by the Treaty of Ryswick, as far as it related to the Ships of Holland alone: and since that time, She has regulated her Conduct in this Particular, as the Interest of her Trade requires.—In Time of War, She always remits this Tax, as She is then forced to make Use of the Freightage of Neutral Nations, Her Naval Power not being equal to the Protection of Her Own;—and in time of Peace, She preserves the Tax, or not, as the Increase or Diminution of her Shipping requires, always giving the greatest Encouragement to her own Marine, which is consistent with the Preservation of Her Manufactures.

France consented sooner to the other Point of Dutch Policy, and granted by Treaty, to the Vessels of Holland, as Neuters, the Right of protecting the Effects of an Enemy: The Laws of France indeed continue still to determine universally against this Right; and in this respect therefore their Laws and Treaties contradict each other: Some very ancient Ordinances of that Kingdom (as we have shewn above) had adjudged as Lawful Prize in this Case, not only the Enemies Goods, but had joined also in the Condemnation, the Neutral Vessel, which carried them; the last however of these Points was remitted as early as 1646, by a Temporary Treaty then made with Holland; the Neutral Vessel,
and

and all the Effects of a Friend found on board it, by this were ordered to be spared : By a subsequent Negotiation, Holland endeavoured to get this Privilege farther confirmed and extended : It was one great part of Monsieur Boreel's Employment in his long Embassy at Paris : At last, however, in the memorable Treaty of defensive Alliance between Holland and France, of the 27th of April, 1662, this Favour was obtained in its full Extent ; by the 35th Article †, it is reciprocally agreed, that all which shall be found on-board the Vessels of either of the contracting Parties, “ encore que la Charge ou Partie d'icelle fut aux Enemies, sera libre et affranchie.” This Article was again renewed by the Marine Treaty of 1678, and confirmed by all the subsequent Treaties between these two Powers : France, from the Condition of her Marine, could certainly reap no Advantage from the Insertion of this Article in her own Treaties ; but it was wise in her to endeavour to establish the Point, as a general Maxim of National Law among other Countries ; Experience hath proved to her the Use of it in Time of War.

But Holland most exerted her Policy to bring that Nation to a Compliance with her Maxims, whom She most apprehended as her Rival in Trade : The scandalous Ignorance of the English Ministers in point of Commerce, and the little Attention, which they paid to the Interests of it, gave such Advantages for some time to the Dutch, that more Vessels of that Country were seen in the Ports of our Colonies, than even of our own ; The Shipping of England from the Reign of Elizabeth had been in a constant Decline ; We should hardly have believed that in the Reign of Charles the Ist, England could not have furnished more than three Merchant Vessels of 300 Tuns, if Sir Josiah Child had not affirmed it : The Time at length arrived, when we were to be put in this respect on an Equality with our Neighbours, and to vindicate (as it

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were)

† See the Treaty in the Letters of D'Estlade, tom. 1.

were) the Advantages of our own Industry and Produce to Ourselves; In 1651, the Parliament of England passed into an Ordinance that Noble Strain of Commercial Policy, called since The Act of Navigation; Mr. St. John returning about this time from his Embassy at the Hague, became the happy Instrument, which Providence made use of, to accomplish this Great Work †; resenting highly the Refusal, which had there been given to his Proposals, and the Insults, which had been offered to his Person, He warmly solicited, and at length induced the Council of State to move the Parliament to pass it; the Committee sat five Days in forming it; and it was at last published by Order of the House with great Pomp and Ceremony at the Royal Exchange: The Dutch were so sensible of its Consequences, that it was the principal Cause of the ensuing War; They called it in a Manifesto ‡ published soon after, "A Vile Act and Order:" At the Negotiations for that Peace, which put an end to the War, De Witt laboured with his usual Industry and Acuteness to procure the Abolition of it; His Efforts were happily in vain; They who made the Law, attended with Vigour to the Execution of it; The Effects of it were immediately apparent: This Act of Policy alone hath fortunately outweighed all our other Follies and Extravagancies; Though condemned by some of our Historians, and unnoticed by others, it hath proved the fertile Source of all our Naval Power; It hath operated insensibly to our Preservation, and hath been the Spring, from whence hath flowed the Wealth and Greatness of England.

Our Ancestors with equal Constancy for some time withstood the other Maxim of Dutch Policy, and would not permit their Vessels, as Neuters, to protect the Effects of the Enemy: By a very ancient and remarkable Treaty made when the Dukes of Burgundy were Sovereigns of the Low Countries, the contrary
Opinion

† Ludlow's Memoirs, Vol. I. Page 345.

‡ The Manifesto of Holland, 1652.

Opinion hath long been established ; In that it was determined *, “ Quod Subditi Unius Principum “ Prædictorum” (that is, Henry VIIIth King of England, and Philip Duke of Burgundy) “ non adducent aut adduci facient per Mare, fraudulosè, vel “ quocunque colore, aliqua bona seu Merchandizas “ Inimicorum alterius Eorundem Principum.” And it farther stipulated, that in case the Master of the Neutral Vessel shall endeavour by a false Report, to defraud the Captor of any of his Enemies Effects, he shall be obliged to make good the Loss sustained thereby, by the Forfeiture of as much of his Own : Frequent Applications were made before the Restoration, both to the Parliament and to the Protector, to alter the Course of proceeding in this respect ; but those Heads, which formed the Act of Navigation, were too wise to consent to this ; a particular Occasion however, at last induced England to make the Concession ; by the Treaty of Commerce made at the Hague, 17th of February. 1668. this Point was settled to the Satisfaction of Holland ; by the 10th Article † of which it was first mutually stipulated, that the Shipping of each Country should carry freely the Goods of the Enemies of each other. The Circumstances of the Time, and the Situation of Affairs when this Article was framed, account for its Admission into this Treaty, and very strongly apologize for the Authors of it ; Lewis the XIVth had then just commenced the first Career of his Ambition, and England resolved with Spirit to throw herself in his Way ; Holland was then engaged in a strong defensive Alliance with France, from whom it was necessary to separate Her, and to make her join with England to support the Independency of Europe ; it was natural on this Occasion to offer her the same Conditions, which she enjoyed by her Treaty with France ;

* Intercursus Magnus in Rymer's Fœdera, Vol. 12. Page 585.

† See N^o. 4. in the Appendix.

France ; some sort of Security indeed was necessary to Her on this Occasion ; The King of England had always shewn but little Affection to the States ; the War with that Country was but just ended, and the Wound but weakly healed : When Sir Wil iam Temple therefore negotiated the Triple Alliance, He privately agreed with Monsieur De Wit, that the French Treaty of 1662, should be the Basis of the subsequent Treaties of Commerce and Defence, which were immediately to be made with England : We have before observed, that in the 35th Article of the Treaty of 1662, the French consented to grant the Right of Protection to Neutral Vessels ; This therefore came of course to be inserted in our Commercial Treaty of 1668, which was made directly after the Triple Alliance ; and the Advantages, which would arise from thence in favour of the Trade of Holland, were the Concessions, which England then chose to make, that She might obtain the Assistance of that Republic again France ; To what other Purpose could England at this Time admit into her Treaties a Point, which She had before so long refused to the constant Solicitations of the States ? Any Benefit which the British Trade might reap from the mutual Stipulation of this Article, could never be the Object which the Ministers of this Country had in View : The Article, considered by itself, is of the most fatal consequence to the Power and Trade of Great-Britain ; When She is at Peace, and Her Neighbours are at War, She cannot reap any Benefit from it, as her own Shipping is not more than equal to the Trade of Her People ;—and when on the other hand Great-Britain is at War, and her Neighbours at Peace, it tends to defeat the best part of her Power, and to render fruitless the Efforts of her Naval Force ;—while at the same time considered as a General Maxim of Right among other Nations, Great-Britain neither wants the Use of it, as she is equal in time of War to the Protection of her own Shipping ; neither can her Merchants enjoy the Advantage of it, as the Employment

ment of Foreign Freightage is in most respects directly contrary to her Laws. This Article was again renewed in the Treaty of Commerce of 1674, which is the Maritime Regulation, that at present subsists between Great-Britain and Holland.

In this Manner therefore the Article having obtained Existence in our Treaties, we are now to consider, whether it is still in Force.

Treaties of Alliance being nothing more, than Stipulations of mutual Advantages between two Communities in favour of each other, ought to be considered in the Nature of a Bargain; The Conditions of which are always supposed to be equal, at least in the Opinion of those, who make it: He therefore, who breaks his part of the Contract, destroys the Equality or Justice of it, and forfeits all pretence to those Benefits, which the other Party had stipulated in his favour: "Si Pars una (says Grotius †) Fœdus violaverit, poterit altera a Fœdere discedere, nam "Capita Fœderis singula Conditionis vim habent." And Puffendorf, speaking of Conventions, says ‡, "Nec Hæc alterum obligant, ubi ab uno Legibus "Conventionis non fuerit satisfactum."

The next Question then is,—Hath Holland complied with her Part of the Treaties or Contracts, to which she is mutually bound with England?—Hath she performed all, that she hath stipulated in our Favour?—Or hath she been deficient in the Execution of some Article, in which the very Life of our Alliance is contained? If so material a Part should be extinguished, it would be unnatural to suppose, that any lesser Limb of the Treaties should have vigour; Holland in this Case could have no Pretence to require the Execution of what may have been conceded in her

† Grotius de Jure Belli & Pacis, L. 2. C. 15. Sec. 15.

‡ Puffendorf de Jure Natura & Gentium, L. 3. C. 8. Sec. 8.

her favour ; especially, if the Performance of it would operate to the Detriment of that Ally, whose Friendship She hath forsaken.

I doubt not, but my Reader hath already answered in his own Mind the Question proposed ;—that the Possessions of the Crown of Great-Britain in Europe have been attacked by the Armies of France ;—that in such Case Holland is obliged by Treaties to grant immediate Succours, and after a certain time to join with Great-Britain in open War ;—that She hath not performed these Conditions, and hath therefore forfeited all Title to any Advantages, contained in those Treaties, and above all to such, as may arise from the Nature of the War itself ?

I shall state however this Point something more particularly ;—Holland is engaged in three different Guaranties or Defensive Treaties with Great-Britain : The first is that Ancient Original Defensive Alliance, which hath been the Basis of all the subsequent Treaties between the two Nations ; This Treaty was designed to have been made immediately after the Triple Alliance, but the unsteady Conduct of the Ministers of Charles the second, and the unfortunate Attachment of that Monarch to the French Court, for some Years delayed it ; It was at last however concluded at Westminster the 3d of March 1678 : It is (except in two immaterial Alterations) an exact Copy of the twelve first Articles of the French Treaty of 1662 ; and both were negotiated by the same Minister, Monsieur Van Beuningen. In the Preamble of this Treaty †, “ the Preservation of
“ each other’s Dominions,” is set forth as the Cause
“ of making it ; and the Stipulations of it are ‡,
“ a mutual Guaranty of all, They already enjoyed,
“ or might hereafter acquire, by Treaties of Peace,
“ in Europe only :” They farther guaranty, “ all
“ Treaties

† See the Treaty, Preamble. N^o. 5. Appen.

‡ Article 2.

“ Treaties, which were at that time made, or might hereafter conjointly be made with any other Power :” They promise also, to || “ defend and preserve each other in the Possession of all Towns or Fortresses, which did at that time belong, or shall for the future belong to either of them ;” and for this purpose it is determined §, that “ when either Nation is attacked or molested, the Other shall immediately succour it with a certain Number of Troops and Men of War, and shall be obliged to break with the Aggressor in two Months, immediately after the Party, that is already at War, shall require it ; and that they shall then act conjointly with all their Forces, to bring the common Enemy to a reasonable Accommodation.”

That Holland hath not complied with the Terms of this Guaranty is evident ;—Minorca, “ a Possession of the Crown of Great-Britain, and which She acquired by Treaty,” hath been attacked ; This is One Case of the Guaranty ;—by that Attack, “ a Treaty that was made in common Concert,” The Treaty of Utrecht, hath been broken ; This is a Second Case of the Guaranty ;—And by these Means, “ England hath been deprived of a Possession, which of Right belonged to her ;” This is a Third Case of the Guaranty ;—And notwithstanding all this, Holland hath not as yet granted the Succours stipulated ; And many more than two Months have passed without her having entered into War conjointly with England, as the Treaty requires.

The Second Species of Defensive Alliance, which subsists between Great-Britain and Holland, is, that, which was first agreed to, in the Treaty of Barrier and Succession of October the 29th, 1709, and again more particularly stipulated in another Treaty to the same purpose of January the 29th, 1713 : The Design of this Treaty is the Guaranty of the Dutch Barrier on one Part, and the Guaranty of the firmest Barrier of British

|| Art. 3. and 4.

§ Art. 5. and 1st Separate Article.

tish Liberty, the Protestant Succession, on the other ; The Stipulations are †, “ that in case either should be attacked, “ the other should furnish at the Requisition “ of the Party Injured, but at his own Expence, certain Succours there expressed ; and if the Danger “ should be such, as to require a greater Force, that “ He shall be obliged to augment his Succours, and “ ultimately to act with all his Power in open War against the Aggressor.” I pretend not to make any use of this Treaty in the present Case ; and only mention it to give a fuller view of the Alliances, which subsist between Us ;—Here however I will indulge a Wish. that the Case of this Guaranty, as far as it relates to the Right of the Crown of Great-Britain, may never again exist : I always read with sorrow, that there ever was a Time, when the unfortunate Dissensions of our People, in a Point, where the Whole of their Happiness was concerned, should have made it necessary to add any other Sanction to our own Laws, than such, as our own Power can afford them ; These Days however of Shame now, I hope, are passed ; More than Forty Years Experience of the Mildest Government must have won the most obdurate Heart, to confess the present Felicity, and bless the Hand, which bestows it : When forgetting Ancient Errors, We are thus united in Defence, the Affection of his Majesty’s Subjects are the Happiest Guaranty of His Right.

I come now to the last Species of Defensive Alliance, which subsists between Great-Britain and Holland ; This was concluded at the Hague the 4th of January 1717 ; To this Treaty France was a Party : The Intention or View of it was ‡, “ the Preservation of “ each other reciprocally in the Possession of their Dominions, as established by the Treaty of Utrecht ;” and the Stipulations are, “ to defend all and each of “ the Articles of the said Treaty, as far as they relate “ to

† Art. 14. of the Treaty of Barrier and Succession of January 29th, 1713.

‡ Art. 5. N^o. 6. Ap.

“ to the Contracting Parties respectively, or each of them in particular ; and they guaranty all the Kingdoms, Provinces, States, Rights and Advantages, which each of the Parties at the Signing of that Treaty possessed ;” and in a Separate Article all this is confined § to “ Europe only :” The Succours stipulated in Support of this Guaranty, are much the same as those mentioned above, first *, “ Interposition of Good Offices,”—then “ a certain Number of Forces,”—and lastly, “ Declaration of War.” This Treaty was renewed by the Quadruple Alliance of 1718, and again by the Accession of Holland to the Treaty of Hanover of 1726, and last of all by the 3d Article of the Treaty of Aix la Chapelle.

Holland hath by no means executed the Terms of this Guaranty,—Minorca, “ a Possession of the Crown of England in Europe, which She enjoyed at the signing of this Treaty,” hath been attacked ; this is one Case of the Guaranty ;—By this Attack, “ The Article of the Treaty of Utrecht, by which that Possession was ceded to England,” hath been broken ; this is another Case of Guaranty :—I need not again observe, that Holland, in consequence of this, hath neither granted the Succours, nor declared War, as this Treaty also requires.

It will however perhaps be objected, “ that England was the Aggressor in the present War, and that unless She had been first attacked, the Case of the Guaranties doth not exist.”—True it is, that the Treaties, which contain these Guaranties, are called Defensive Treaties only ; but the Words of Them, and particularly of that of 1678, by no means express the Point clearly in the Sense of the Objection ; They guaranty in general certain Rights and Possessions of both Parties, and when they declare, what shall be done in case either shall be “ attacked,” or “ molested,” in those Parts, which are the Objects of the Guaranties, it is not

§ Separate Article.

* Art. 5. and 6.

not mentioned as necessary, that this should be the first Attack ;—if however we allow the Treaties to have all the Meaning which they who make this Objection can require, the Evidence of Facts will sufficiently prove, that France was the Aggressor in the present War ;—If we look to America, the present War there is little more than a Continuation of the last ; repeated Usurpations of the Possessions of Great-Britain have been there the constant Employment of France, almost from the Hour in which the Treaty of Aix was signed ; and these were at last followed by an avowed military Attack upon a Fort belonging to the Crown of Great-Britain, by regular Troops acting under a Commission from the Court of France :—If we consider America, as having no Concern in the present Question ; France will also be found to have been the Aggressor in the European War :—If we regard the Intention alone, the first hostile Intention in Europe was the Design to invade Great-Britain, sufficiently proved, and avowed by the Preparations which France made for it :—If we look for the first Overt-act, France made the first open Attack upon Minorca ;—the Opinion indeed of the Parties concerned sufficiently shew, that the Attack upon Minorca was the opening of the European War ; notwithstanding all which had passed elsewhere, Proposals for an Accommodation of the American Disputes were never discontinued, nor the War considered as universal, till that Island was absolutely invaded. As for the Captures at Sea, they must be considered as belonging to the American War. They were made in consequence of the Hostilities there first commenced, and were seized as Reprisals, for the Injuries there committed upon the Property of the People of England ; as such They were always declared to be taken by the Ministers of England, and the Value of them to be on that account retained * ; and the Legislature hath expressly refused to distribute it among the Captors, as they have done in respect to all other Prizes,

* See the English Declaration of War.

Prizes, which have been made since the War of Europe began. But even if this Distinction, which puts the Question out of all Doubt, had not been made by the Government of Great-Britain, these Captures surely can never be looked upon but as a Part of the American War; as such a War must always be supported by Succours sent from Europe, it is absurd to suppose that either Party in this Case would not endeavour, as far as he was able, to take or destroy entirely the Shipping of his Enemy, by which alone those Succours could be conveyed. Countries which have very little internal Force within themselves, cannot be defended but by such Troops as are thrown into them; to defeat therefore the only Means by which this can be effected, must be esteemed as material a Part of such a War, as the Means to invest a Fortrefs are a material Part of a Siege.—But after all, when the Execution of Guaranties depends on Questions like these, it will never, I fear, be difficult for an Ally, who hath a Mind to break his Engagements, to find an Evasion to escape; it is his Duty however, on such Occasions, to weigh well the Spirit of his Alliances, and to consider which Party hath always shewn the most Ambition, or hath most Inclination and Ability to invade the Dominions of his Neighbour; it is not the first military Action alone, but the Usurpation of another's Right, or the Denial of Justice, which in the Opinion of the ablest Writers denominate the Aggressor, and evince the Commencement of a War.

A more subtle Objection will still perhaps be made to what has been said: It will be urged, “that tho’ France was the Aggressor in Europe, yet that it was only in consequence of the Hostilities commenced before in America; with which it is determined by Treaties, that Holland is to have no Concern, and that the Rights contested at present are not contained in the Guaranties.”—If the Reasoning on which this Objection is founded was admitted, it would alone be sufficient to destroy the Effects of every Guaranty, and to extinguish that Confidence which Nations mutually place in each other, on the Faith of Defensive Alliances: It points out to the Enemy a certain Method of
avoiding

avoiding the Inconvenience of such an Alliance; it shews him where he ought to begin his Attack; let only the first Effort be made upon some Place not included in the Guaranty, and after that he may pursue his Views against the very Object of it, without any Apprehensions of the Consequence; let France first attack some little Spot belonging to Holland in America, and her Barrier would be no longer guarantied: To argue in this manner would be to trifle with the most solemn Engagements. The proper Object of Guaranties is the Preservation of some particular Country in the Possession of some particular Power. The Treaties above-mentioned, promise the Defence of the Dominions of each Party in Europe, simply and absolutely, whenever they are "attacked" or "molested." If in the present War the first Attack was made out of Europe, it is manifest, that long ago an Attack hath also been made in Europe; and that is beyond a Doubt the Case of these Guaranties.

Let us try, however, if we cannot discover what hath once been the Opinion of Holland on a Point of this Nature.—It hath already been observed, that the Defensive Alliance between England and Holland, of 1678, is but a Copy of the 12 first Articles of the French Treaty of 1662; soon after Holland had concluded this last Alliance with France; she became engaged in a War with England; the Attack then first began, as in the present Case, out of Europe, on the Coast of Guinea; and the Cause of the War was also the same, a disputed Right to certain Possessions out of the Bounds of Europe, some in Africa, and others in the East-Indies: Hostilities having continued for some time in those Parts, they afterwards commenced also in Europe; immediately upon this, Holland declared, that the Case of that Guaranty did exist; and demanded the Succours which were stipulated, I need not produce the Memorials of their Ministers to prove this; History sufficiently informs us, that France acknowledged the Claim, granted the Succours, and entered even into open War in the Defence of her Ally: Here then we have the Sentiments of Holland on the same Article, in a Case minutely parallel; France also pleads in fa-
vour

your of the same Opinion, though her Concession in this respect, checked at that time her youthful Monarch in the first Essay of his Ambition, delayed for several Months his Entrance into the Spanish Provinces, and brought on him the Enmity of England.

If any Doubt can yet remain, about the Meaning and Intent of this Article, it may farther be proved from the Opinion of the Minister who made it.—Immediately after Holland was engaged in the War above-mentioned, she sent to the Court of France Monsieur Van Beuningen, to press the Execution of that Guaranty which he had himself concluded: It is remarkable, that in his Conversations on this Subject with Monsieur de Lionne, the same Objection was debated against which I now contend: Van Beuningen treated with great Contempt; he asked Monsieur de Lionne*, if the Pretence of the European War being only a Continuation of that of Africa, was, what the English alone pledged to deprive them of the Succours of France; or whether the French Ministry laid any Strefs upon it, as an Argument at all to be supported. De Lionne first gave him to understand, that he thought it of some weight, “A quoi, je repondis,” says Van Beuningen, “que je ne croyois pas, que cette Objection fut serieuse, puis qu’ il dit alors, que Celui, qui a commencé la Guerre en Guinée, & de la en Europe, n’a pas commencé de Guerre en Europe; & ne pouvoit passer pour troubler la Paix & le Commerce en Europe, parce qu’ il l’avoit troublé ailleurs auparavant;” and then he adds, “Ce, que j’ ajoutai a ce Raisonnement pour refuter cette Objection, restá sans replique.” This was the same Monsieur Van Beuningen who negotiated our Defensive Treaty of 1678; he made the Terms of both these Guaranties precisely like; and we before shewed, that our own Case at present is exactly the same as this, on which his Opinion hath been produced.

If

Letter de Monsieur Van Beuningen à Monsieur de Lionne, le 26, 1664.

If however the Words of these Treaties had been against the interpretation, which hath been given them, I might justly have appealed to the Spirit of them, as alone a sufficient Foundation, on which to build my Opinion: The whole Design of all these our Alliances with Holland is to form a Barrier against the Power of those Mighty kingdoms, whose Ambition might otherwise induce them to destroy the Independency of Europe: They are, in fact, a regular Continuation of that Policy, which gave Birth to the Triple Alliance, when the dangerous Spirit of the French Councils first began to appear. To answer this great End, they guaranty the Possessions of those two Maritime Countries, who, from their Wealth, their Internal Strength, and their Incapacity of having any ambitious Views themselves. are the best Security, against the Designs of others: But as the Obligations of these Guaranties are too considerable to be made use of on trifling Occasions; for this purpose. the Contracting Parties have made one Exception: The Rights of the European Kingdoms in the distant Parts of the World, and particularly in America, are very uncertain, and the Cause of frequent Dissentions; and it is well known, that Wars have there subsisted for many Years, between the Trading Subjects and Commercial Companies of the several Nations; while the Mother Countries have lived, if not in Friendship, at least in Peace; This then is the Case, particularly excepted from the Guaranty: but this Exception must always be so interpreted, as to be made consistent with the principal Intention of the Alliance:—If some great Country out of Europe should become of so much Importance, that for the Interest of Europe, it ought to remain in the Hands of the present Possessors; If the same great Disturber of Mankind after many fruitless Attempts in his own Neighbourhood, should now turn his Thoughts another Way, and should endeavour, by distant Diversions, to enfeeble that Power, on whose Consideration the Safety of the Public very much depends, and to deprive Her of the Sources of her Wealth, which She hath always so largely expended in Support of the Common Cause
 Would

Would a generous Friend, who attends to the Spirit of his Engagements, say, that the Case of the Guaranty did not then exist? and, when the Reason of the Exception is vanished, Would He urge the Pretence of it, as an Excuse, for giving up the principal Point, on which the Alliance was constructed?—But if to this distant Attempt, the Enemy should add an open and avowed War in Europe, should threaten the Mother-Country with Invasion, attack her Fortresses, and take occasion from thence to spread his Armies over the Continent; Shall this pretended Exception still be urged, when the literal Case of the Guaranty is now become apparent? On this weak Foundation, Shall a wise People, under such Obligations, not only refuse to grant their Assistance, but not permit their forsaken Ally to make a full Use of his Power; holding back in this manner his Arm, when they will not stretch forth their own, and claiming from the very Contracts, they have broken, that Privilege, which they turn to the Destruction of her Ally. The Absurdity is shocking; such however is the present Case of England: Unhappy in her Friendships! She hath neither that Assistance from Allies, which They are bound by Treaty to give Her, neither is She allowed to exert even her own Force, though abandoned to her own Defence.

In this manner it might be argued, if the Article, on which Holland founds Her Right of protecting the Property of the Enemy, was in Force at the Commencement of this War: but I hope to shew, on the contrary, that as far as it relates to the present Case, it was repealed long ago: The Treaty, in which this Article was last inserted, was concluded the 1st of December, 1674: Four Years after this, in 1678, was past that Defensive Alliance†, in which it was stipulated between Holland and England, “that if either Party should be attacked in Europe, the other should declare

† Defensive Alliance of 1678.

“ declare War against the Aggressor, two Months after He is required ? ” By this Treaty. therefore, two Months after England is attacked by France in Europe, Holland must become the Enemy of the latter, as well as England ; and to be the Enemy of another, means certainly to distress his Trade, and seize his Property ; not, to preserve the former, and protect the latter : If this therefore is the right Interpretation of the Word, Enemy, this Article directly and positively declares, that two Months after France has attacked the European Possessions of England, the Ships of Holland shall not have a Right to protect the Effects of the French : This therefore is derogatory to the 8th Article of the Marine Treaty of 1674, and as being posterior to it, absolutely repeals it. In all Laws, (and such are Treaties, in respect to Nations) the last enacted always sets aside the former, so far as they disagree. Cicero says †, it ought to be considered, “ *Utra Lex posterius sit lata, nam postrema quæque gravissima.* ”

But this Maxim is not necessary on the present Occasion, since the same Article is again repealed by two subsequent Treaties, in Words as positive, as can be used : For in that Treaty ‡, by which all the Old Alliances between the Maritime Powers were renewed immediately after the Revolution ; and also in that of February 6, 1716, by which they were again renewed upon the Accession of the present Family to the Throne, the Treaties of 1674 and 1678 are expressly mentioned, and made of both a Part ; and it is there declared, that “ They shall have the same Force and Effect, as if they “ had been inserted in these Treaties verbatim ; that “ is to say, so far as they do not differ, or are contrary to one another ; yet so as whatever hath been “ established by any later Treaty, shall be understood, “ and performed in the Sense therein expressed, without any regard had to any former Treaty : ” Can it then

† Cicero de Inventionē.

‡ Treaty of Friendship and Alliance between England and Holland. August 1689,

then be doubted, that the Articles above mentioned are "contrary to one another," as much as Peace and War, as much as Friendship and Enmity? Is not the Defensive Alliance of 1678, "a later Treaty," than the Marine Regulation of 1674? And ought not therefore, according to the Words of the Renewal, "the Article of the Latter to be performed in the "Sense therein expressed, without any Regard being "had to the Former." Since then, the Year 1689, this Article, as far as it relates to the present Case, hath been twice repealed.—Thus much therefore may suffice to shew, that the Right of Holland in this respect is extinct.

There remains one more Claim to be considered ; a Claim, which, if Report had not averred, that such a one had been formally offered, would by no means deserve an Answer.—The Northern Crowns, whose Commercial Treaties with Great-Britain contain not any Article, which gives them expressly a Right to carry the Property of the Enemy, have endeavoured to deduce this Right from a general Stipulation, which is to be found in some of their Treaties, declaring, that "they shall be "treated in like maner as the most favoured Nation ;" and because Great-Britain hath granted by Treaty to some Nations, the Right, in time of War, of becoming the Carriers of her Enemies ; they endeavour to infer from hence, that they ought to be admitted to the same Favour :—To this it might shortly be replied, that the Rights of every Country in this respect, as far as they relate to the present Case, have been proved above, to be no longer in Force ; if the Inference therefore was otherwise just, the Foundation being thus destroyed, whatever is built upon it, must necessarily fall with it. But this Stipulation of equal Favour, from the very Nature of it, can relate to nothing else, but such Advantages as may be granted to Foreign Traders, by the Municipal Laws or Ordinances of each Country ; such, as Equality of Customs, Exemption from the Rigour of ancient Laws, which would affect them as Aliens, and the Privileges of Judges-Conservators, and Consuls ; These are the proper Objects of Favour ; and

because the whole Detail of these could not easily be specified in a Treaty, for this Reason they are thus comprehended in a general Article : If the Rights conceded by Treaties were the Objects of this Stipulation, to what Purpose were any other Articles added, since this would contain them all ; and would alone include every Privilege, which past or future Treaties could afford them ? and can it be supposed, that any Nation meant in this manner to preclude itself from the Power of exchanging, by Treaty with some particular Country, any great Right of its own, in return for an equal Advantage ? or that this Right should, in such case, be universally forfeited to the People of every other Nation, who would thus reap the Benefit, without having been Parties to the Bargain ?—But this Point is made clear beyond a Doubt from the Words of the Treaties themselves, where this general Equality is stipulated.—In the Treaty of Commerce between Great-Britain and Sweden, of the 21st of October, 1661, the principal one at present in Force between the two Countries ; the fourth Article †, which contains this Stipulation, plainly makes it refer to such Favours only, as may be enjoyed in matters of Traffic within their respective Dominions ; The Treatment, which the Contracting Parties shall there give to the Subjects of each other, is the principal Purport of the Article ; it specifies many Particulars, and among the rest, it stipulates that the People of both Countries shall have “ Liberty to import
 “ and export their Goods at Discretion, the due Customs being always paid, and the Laws and Ordinances of both Kingdoms universally observed ;” and then, manifestly connecting this with what follows, it adds, “ which Things being pre-supposed, They shall
 “ hold such ample Privileges, Exemptions, Liberties, and Immunities, as any Foreigner whatsoever doth
 “ or shall enjoy ;” the general Equality therefore here stipulated, plainly relates to those Places alone, where the Customs of these Kingdoms are to be duly paid,
 and

and the Laws and Ordinances of them are in Force, and, that is, only within their respective Dominions: The Privileges here conceded cannot possibly have any larger Extent; and to confine the Sense of the Article still more strongly to the Explanation, which hath now being given of it, the Words, "in the Dominions" and Kingdoms of each other," are twice repeated, to determine clearly, where that Trade must be carried on, to which this Favour is meant only to be granted; if however any Doubt could yet remain, in respect to this Interpretation, They who made the Treaty have given the strongest Proof, that under this Article They never intended to imply a Right of carrying the Property of an Enemy; since, by the 12th Article of this same Treaty, an Attempt of that Nature is pronounced to be "a heinous Crime," and the strongest Provisions are made to prevent it.—In the Treaty of Commerce between Great-Britain and Russia, of the 2d of December, 1734, this Stipulation of equal Favour is inserted in several Articles *; but it appears in every one of them, to relate to nothing else, but to the particular Privileges, which the Subjects of each were to enjoy, while they were trading within the Dominions of the other.—In the 2d Article, this Equality is expressly said to be granted "throughout the Dominions" of the contracting Parties in Europe.—In the 3d, it relates only to "the favourable Reception of the Subjects of each other in the Ports of their respective Countries."—In the 14th, it grants only an equal Freedom to import "such Merchandise into each others Dominions as is allowed to the Subjects of any other Country;"—and in the 28th, it refers only to the "Respect and Treatment, which is to be given to the Subjects of one Party, who come into the Dominions of the other."—In the Treaty of Commerce between Great-Britain and Denmark, of the 29th of November, 1669, the only one at present in Force

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between

between the two Kingdoms, there is no Article, which grants even this Equality of Favour ; but the 20th-Article * of this Treaty expressly declares it to be illegal and injurious to protect the Effects of the Enemies of each other ; and stipulates every possible Means to prevent it.—Nothing more, I hope, need be said, to refute this last and weakest Pretence to a Right of carrying freely the Property of the Enemies of Great-Britain.

As there is no Article therefore, which grants a Right of this Nature, at present in Force in any of the Commercial Treaties between Great-Britain and the Neutral Powers ; it is unnecessary to shew, that most of the Captures which England hath made of the Vessels of these Nations, ought not properly to be referred to it, but may be justified by another Part of the said Treaties, where it is declared †, “ that all Goods are contraband, “ which are carried to Places blockaded or invested.” The Debate here would turn on the real Existence of the Blockade.—To evince this, I might shew, what Opinion the Dutch had of a Naval Blockade in 1689, when They declared ‡ publicly to Neutral Nations, that They designed to block up all the Ports of France.—I might observe, that as the Possession of the principal Avenues to a Town, constitutes a Blockade by Land ; and that it is not necessary, for this Purpose, to have made a complete Line of Circumvallation : so by keeping great Squadrons of Ships of War cruising constantly before the Ports of an Enemy, by destroying in this manner totally his Trade, and preventing his Fleets of War from ever venturing out, except now and then a Ship or two by Stealth, a Blockade ought certainly to be considered

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* No. IX. Appendix.

† Art. 41. Treaty of 1674, between Great Britain and Holland. The same Article is found in every other Commercial Treaty.

‡ Convention between England and Holland, 1689.

as completely established by Sea.—I might farther prove the Cause from its Effects, and shew, that the American Islands at least have experienced all the Consequences of such a Situation; where want of Communication with the Mother-Country, Distress, and Famine, fully declare, that they have been invested. But as this Topic may not perhaps relate to the Case of every Capture, and depends on the particular State of a Variety of Facts, I shall not dwell any longer upon it at present. The Question hath here, I hope, sufficiently been argued on Principles which are plain and comprehensive, on those equitable Regulations, which Nature hath established among Nations, and on those particular Contracts with which Communities have bound themselves: And as I before endeavoured to prove, that Neutral Nations had no Right, by the former of these Obligations, to protect the Property of the Enemy; so now it hath been shewn, by what Policy the Dutch first obtained this Privilege;—by what Treaties it hath since been taken from them;—and by what Conduct they have lately forfeited whatever might remain of this Right. It hath also, I flatter myself, appeared, that no other of the Neutral Powers, under the Pretence of any Article in their Treaties of Commerce, can justly claim such a Right.—Upon the whole, therefore; I will now beg Permission to conclude, that the Naval Power of England hath been conducted, during the present War, with no less Justice than Spirit;—that the Faith of our Sovereign is as spotless as his Courage;—and that the Honour of our Country is unblemished.

The Basis of just Complaint being thus removed, those idle Clamours, which have been founded upon it, by no means merit our Attention; to charge England with Ambition, must appear so absurd to all who understand the Nature of her Government, that at the Bar of Reason it ought to be treated rather as Calumny than Accusation: Possessed of every Blessing, which Civil Government can produce, She is open to no Temptation with which Ambition might seduce

her ; Pursuits of that Kind might possibly operate to the Destruction of her Constitution, and her system of Happiness might be subverted by the Augmentation of her Power ; it must always be the Interest of England to protect the just Rights of Commerce, and to support those Principles which promote the Labours of Mankind, since she herself can only be Great from the virtuous Industry of her People. To obtain the largest Extent for the Exertion of this, is the Point to which all her Policy should tend ; and if ever, forsaking these Maxims, she should seek to enlarge her Power by any Acts of Ambitious Injustice, may she then, for the Welfare of the human Race, cease to be any longer great or powerful ! Her Courts of maritime Jurisdiction are more wisely calculated to preserve the Freedom of Navigation than those of any other Country ; as they are not subject to the Controul of her executive Power, the Passions of her Princes or Ministers can never influence the Decisions of them ; and foreign Traders have in favour of their Property all the Security which the Nature of the Thing will admit, the Consciences of wise Men determining upon Matters of Right, whom the Threats of Power cannot affect, and who are set free, as far as possible, from all Byas and Partiality ; and to the Honour of the learned Persons, who at present preside in those Courts, one impartial Testimony shall here be produced in their favour ; Though Treaties have expressly pointed out to all, who may there think themselves injured, a regular Method of Redress before a superior Tribunal, the Merchants and Freighters of Holland have never ventured, as yet, to bring to a Hearing, or even to put into a way of Trial, any one of the Appeals which they have made from the Determinations of these Judges, giving hereby Cause to presume, that they made them with no other Intention but to delay the Execution of the Sentences ; and, conscious of the Invalidity of their Rights, they have in this manner plainly confessed the real Equity of those Decisions which have been passed upon them. That amid the Confusions of War some
Irre-

Irregularities may be committed, is a Misfortune too true to be denied, but which the Circumstances of the Case render impossible to be wholly prevented; they are the Consequences of all Wars, not alone of the present; to destroy the Trade of the Enemy, it is necessary to employ Privateers, which cannot always be kept under those strict Rules to which a more regular Force is subject; these maritime Hussars may sometimes exceed their Commissions, and be guilty of Disorders, the Authors of which cannot always be punished, because the Nature of the Fact renders the Discovery of them difficult; but can the Crimes of these be imputed to Ministers, whose Ears are always open to Complaints, and who labour, as much as possible, to redress them? The Privateers of England are already made subject to every Restraint, which Naval Policy hath as yet invented, to force them to conform to their Duty; if however these are found insufficient, and if any more successful Means can be discovered to prevent every unjust Depredation, by which the Evils of War may be diminished, confident I am that Great-Britain will be the first to adopt them; let them be consistent only with the Use of her Naval Power, and conformable to Justice, the British Legislature will enact such into a Law, and the British Ministry will attend most steadily to the Execution of them.

But after all, the wisest Regulations on Occasions like this cannot be expected to answer fully the End proposed; the System of Humanity is no where perfect, but in respect to Nations its Weakness is most apparent; the softer Ties of Natural Affection among these have little Effect, and no coercive Bands of Power exist to regulate and controul their Passions; it is the Virtue of Governments alone, on which the general Prosperity depends, and Treaties have no better Sanction, than what that Virtue can give them: These were the Principles from which I first commenced my Discourse; by these the Rulers of Communities are instructed to amend, as far as possible, by their Prudence, what Nature hath left imperfect; Ambition or Avarice will

augment the Evil, Moderation may prevent it ; every little Inconvenience must be patiently suffered, where a superior Right makes it necessary ; the Love of our Country should never induce us to act contrary to that Love which we ought to bear to Mankind, since the Interests of both, if they are rightly pursued, will always be found consistent with each other.

APPENDIX.

A P P E N D I X.

N^o I. MARINE TREATY *between the Crowns of Great-Britain and France; concluded at St. Germain's, the 24th of February, 1676-7.*

Art. VIII. **M**ERCHANDISES appertaining to the Subjects of the most Christian King, which shall be found on board Ships belonging to the Enemies of the King of Great-Britain, shall be liable to Forfeiture, tho' they are not contraband; and, on the contrary, the Goods of the Enemies of the King of Great Britain shall not be taken or confiscated, if they be found on board any Ships appertaining to the Subjects of the most Christian King, although the said Goods make up the best Part of the whole Lading of such Ships; but still with an Exception of all contraband, which when taken shall be disposed of in the manner directed by the preceding Articles. In like manner, all Merchandises belonging to the Subjects of the King of Great-Britain, which are found on board any Ships belonging to the Enemies of the most Christian King, shall be liable to Confiscation, tho' they be not contraband; and on the contrary, any Merchandises of the Enemies of the said most Christian King shall not be taken or confiscated, if they are found on board any Ships appertaining to the Subjects of the King of Great-Britain, tho' the said Merchandises make up the best Part or the whole of the Lading of the said Ships; but still with an Exception to contraband Goods.

N^o II. MARINE TREATY *between Gréat-Britain and the United Provinces, to be observed by Land and by Sea, throughout all Countries and Parts of the World; concluded at London, December the 1st, 1674. Renewed by a Treaty of Alliance between the said Powers, February the 6th, 1715-16.*

Art. VIII. Whatsoever shall be found laden by his Majesty's Subjects upon any Ship whatsoever belonging to the Enemies of the Lords the States, although the same be not of the Quality of contraband Goods, may be confiscated: But on the contrary, all that which shall be found put on board Ships belonging to the Subjects of the King of Great-Britain, shall be accounted clear and free, although the whole Lading, or any Part thereof, by just Title of Property should belong to the Enemies of the Lords the States; except always contraband Goods: But in case any such are intercepted, all Things shall be done according to the Meaning and Direction of the foregoing Articles; and so likewise, whatsoever shall be found laden by the Subjects of the Lords the States, in any Ship whatsoever belonging to the Enemies of his Majesty, altho' the same be not of the Quality of contraband Goods, may be confiscated: But on the other Side, all that which shall be found put on board Ships belonging to the Subjects of the Lords the States, shall be accounted clear and free, although the whole Lading, or any Part thereof, by just Title of Property, should belong to the Enemies of his Majesty; except always contraband Goods.

N^o III. TREATY *of 1667, between Great-Britain and Spain, included in that between the said Powers at Utrecht, of November 28, 1713, and renewed by that of Aix-la-Chapelle, 1748.*

Art. XXI. The Subjects and Inhabitants of the Kingdoms and Dominions under the Obedience of the Kings of Great-Britain and Spain respectively, may
with

with all Security and Liberty navigate and traffic throughout all the Kingdoms, States, and Countries, cultivating Peace, Amity or Neutrality, with either of the said Kings.

Art. XXII. The Ships or Subjects of either of the said Kings shall in no wise interrupt the said Liberty, by any Hindrance or Disturbance whatsoever, by reason of any Hostility which now is or may be hereafter between either of the said Kings, and any other Kingdoms, Dominions and States, being in Friendship or Neutrality with the other Party.

N^o IV. MARINE TREATY *between Great-Britain and the States-General; concluded at the Hague the 17th of February, 1667-8. Renewed by a Treaty of Alliance between the said Powers, February 6, 1715-16.*

Art. X. Whatsoever shall be found laden by his Majesty's Subjects upon a Ship of the Enemies of the said States, although the same were not contraband, shall yet be confiscated, with all that shall be found in such Ship, without Exception or Reservation: But on the other Side, all that shall be found in any Ships belonging to any Subjects of the King of Great-Britain, shall be free and discharged, although the Lading or any Part thereof belong to the Enemies of the said States, except contraband Goods, in regard whereof such Rule shall be observed, as hath been laid down in the foregoing Articles.

N^o V. A TREATY *of a Defensive Alliance between Charles II. King of England, and the States-General of the United Provinces of the Netherlands; concluded at Westminster, March the 3d, 1677-8. Renewed by a Treaty of Alliance between the said Powers, February 6, 1715-16.*

Art. II. Moreover there shall be a strict Alliance and faithful Confederacy between his Majesty and his Successors, Kings of Great-Britain, and the said Lords the States-General, their Estates and Territories, for the
mutual

mutual Support and Preservation of each other in Tranquillity, Peace, Amity, and Neutrality both by Sea and Land, in the Possession of all the Rights, Franchises, and the Liberties they do, or ought to enjoy, or which they already, or may hereafter acquire by Treaties of Peace, Friendship, and Neutrality, which before have been made, and may be for the time to come, conjointly and in common Concert with other Kings, Republics, Princes, and Cities, within the Bounds of Europe only, and no farther.

Art. III. And thus they promise and oblige themselves to be mutual Guaranties, not only of all the Treaties which his Majesty and the said Lords the States General have already made with other Kings, Republics, Princes, and States, which shall be produced on either Side, before the Exchange of the Ratifications; but also all those that may be made hereafter, conjointly and in common Concert; and to defend, assist, and reciprocally to preserve one another in Possession of the Territories, Towns, and Places, which do at this time belong, and for the future shall belong, as well to his Majesty and his Successors, Kings of Great-Britain, as to the said Lords the States-General, by the said Treaties, in what Part of Europe soever the said Territories, Cities, and Places shall be situated; in case his said Majesty, or the said Lords the States-General, as aforesaid, happen to be molested or attacked by some hostile Act or open War, by or upon any Pretence whatsoever.

Art. IV. The mutual Obligation of assisting and defending one another, is to be understood, and doth extend to the Conservation and Maintenance of his Majesty and the said Lords the States-General, their Countries and Subjects, in all their Rights, Possessions, Immunities, and Liberties, as well in respect to Navigation as Commerce, and every thing else both by Sea and Land which shall be found to belong to them by common Right, or have been acquired by Treaties already made, or to be made in the manner aforesaid, with and against all Kings and Princes, Republics, and States; so far forth,

forth, that if his Majesty, or the said Lords the States, in prejudice to the said Tranquillity, Peace, Friendship, or present or future Neutrality, shall hereafter be attacked, or in any other manner whatsoever disturbed in the Possession and Enjoyment of their Estates, Territories, Towns, Places, Rights, Immunities, and Freedom of Commerce, Navigation, or any thing else, which his Majesty or the said Lords the States-General do now enjoy, or shall hereafter enjoy by common Right, or by Treaties already made, or that may be made as aforesaid ; his Majesty and the said Lords the States-General, as soon as they are informed of it, or required thereto by each other, shall do all they possibly can, conjointly to terminate the Troubles or Hostilities, and procure Reparation to be made for the Loss or Injuries done to one of the Allies.

Art. V. And in case the said Attempt or Trouble be seconded with any open Rupture, that Party of the two Allies who is not attacked, shall be obliged to break with the Aggressor in two Months, immediately after the Party that is already at a Rupture shall require it ; during which time he shall use all his Endeavours, by his Ambassadors and other Ministers, to mediate a just Accommodation between the Aggressor and Disturber, and the Party first attacked or molested ; and yet shall in the said Time give powerful Assistance to his Ally, such as shall be agreed on by the separate Articles between his Majesty and the said Lords the States-General ; the which, tho' there had been no mention made of them in this Article, shall be kept and observed, as if they had been inserted and set down therein ; it being already left to the Choice of that Party of the Allies that shall be at Rupture, to continue to enjoy the Benefit of the same Succours, in case the Conjunction of the Times and the State of his Affairs shall make him prefer the Effect thereof before an open Rupture of his Ally with the Aggressor.

Art. VI. The mutual Guaranty being in this manner promised and established, when either of the Allies
comes

comes to be attacked or molested, if the States-General of the United Provinces happen to be in, or find themselves obliged to enter into an open War; his Majesty shall in like manner be obliged to break with the Aggressor or Disturber, and to make use of all his Power, and his whole Forces both by Sea and Land, and to join them with those of the Lords the States-General, when it shall be thought expedient, in order to bring the common Enemy to a reasonable, firm, and equitable Accommodation with the King of Great-Britain and the said United Provinces.

Art. VII. And in this case the Forces of his Britannic Majesty, and of the said Lords the States-General, shall act conjointly or separately, as they his said Majesty and the said Lords the States-General shall then more particularly concert Affairs between them; they being to advise and consult together about the most proper Methods to annoy the common Enemy, whether by way of Diversion or otherwise, to the End he may sooner be brought to an Accommodation as aforesaid.

Art. VIII. The said Lords the States are to perform the same that is contained in the two Articles immediately foregoing, in case the King of Great-Britain shall be attacked or molested in the manner aforesaid.

N^o VI. *TREATY of Defensive Alliance between Great-Britain, France, and Holland, concluded at the Hague the 4th of January, 1717; renewed by the Quadruple Alliance of 1718; in the Accession of Holland to the Treaty of Hanover in 1726, and by the Treaty of Aix-la-Chapelle.*

Art. V. As the End and genuine Design of this Alliance between the said Kings and States-General, is, to preserve mutually the Peace and Tranquillity of their respective Kingdoms, States, and Provinces, which was established by the last Treaties of Peace between the most serene Queen of Great-Britain, the most serene

rene most Christian King, and the said High and Mighty Lords the States-General of the United Provinces, concluded and signed at Utrecht on the 11th Day of April, in the Year of our Lord 1713, it is agreed and concluded, that all and singular the Articles of the said Treaties of Peace, so far as they relate to the Interests of the said three Powers respectively, and each of them in particular, as also the Successions to the Crown of Great-Britain in the Protestant Line, and to the Crown of France, according to the said Treaties, shall have their full Force and Effect; and the said most serene Kings, and the Lords the States-General, promise their mutual Guaranty for the intire Execution of all that is stipulated in the said Articles, so far as they relate (as is aforesaid) to the Successions and Interests of the said Kingdoms and Provinces; as also for the maintaining and defending of all the Kingdoms, Provinces, Territories, Rights, Immunities, or Advantages, which each of the said Allies respectively shall actually possess at the time of signing this Alliance: For which End the said Kings and States-General have consented and agreed, that if any one of the said Allies shall be hostilely attacked by any Prince or State whatsoever, the other Allies shall immediately interpose their good Offices with the Aggressor, to procure Right to be done to the Party injured, and to induce the said Aggressor to abstain intirely from all farther Hostility.

Art. VI. But if these friendly Offices should not have the desired Effect, by reconciling both Parties, and obtaining Satisfaction and Reparation of Damages within the space of two Months; then those of the Parties contracting who shall not be attacked, shall be obliged to assist their Ally without Delay, and shall furnish the Party attacked with the Succours here-under specified, that is to say,

The King of Great-Britain 8000 Foot, and 2000 Horse.

The most Christian King 8000 Foot, and 2000 Horse.

The States-General 4000 Foot, and 1000 Horse.

But

But if the Ally, who shall be engaged in War, in the Manner aforesaid, shall desire to have Assistance by Sea, or shall chuse Money rather than Land or Sea-Forces, it shall be freely at his Option ; the Subsidies to be furnished bearing always proportion to the Forces above specified.

And that no Dispute may arise hereupon, it is agreed, that 1000 Foot shall be computed at 10,000 Guilders, Dutch Money, a Month ; and likewise 1000 Horse, at 30,000 Guilders of the same Money a Month, reckoning Twelve Months to the Year ; the Naval Succours to be valued in the like Proportion.

SEPARATE ARTICLE. Whereas in the Treaty of Alliance this Day concluded, between the most Serene and most Potent King of Great-Britain, and the most Christian King, and the High and Mighty Lords the States-General of the United Netherlands, there is among other things a Stipulation concerning the Succours or Assistance with which the Allies are obliged mutually to help each other, in case one or other of them should be hostilely attacked : Left any Doubt should hereafter arise touching the Number of the said Succours or Assistance, by reason of the Alliances now subsisting between the Crown of Great-Britain and the Republic of the United Netherlands, the under-written Ambassador Extraordinary and Plenipotentiary of the King of Great-Britain, and Deputies and Plenipotentiaries of the Lords the States-General, have judged it necessary to declare, as they do declare by this Separate Article, which is to have the same Force as if it had been inserted in the Principal Treaty, that the former Treaties and Alliances between the Crown of Great-Britain and the United Netherlands shall have full Effect in all their Articles, but especially in those which relate to the Succours or Assistance to be mutually furnished according to the Proportions stipulated in the said Treaties or Alliances ; which Articles shall not only remain in Force, but are confirmed by this Separate Article,

Article, and the said Proportions stipulated by the former Alliances, as to the Succours or Assistance mutually to be furnished, shall be always and exactly observed, even when the above-said Succours shall be required by virtue of the Treaty this Day signed : And that as well the King of Great-Britain, as the Lords the States-General, shall if the Case happen, have a Right to require the Succours, either by virtue of the former Treaties, or by virtue of the Alliance this Day concluded ; yet so, that if the Succours should be furnished by virtue of the former Treaties, neither Party shall be intitled to ask further Assistance by virtue of this Alliance. And whereas the said Succours, as also the Guaranty mentioned in the Fifth Article of the said Treaty concluded this Day, are by a certain Separate Article settled between the most Christian King and the States General, restrained and limited to Europe ; so likewise the same Succours and Guaranty between the King of Great-Britain and the Lords the States-General, are by virtue of this Article restrained and limited to Europe. In Witness whereof, &c.

N^o. VII. *TREATY of Alliance and Commerce between Great-Britain and Sweden, 21st October, 1661.*

Art. IV. It shall be free for either of the said Confederates, and their Inhabitants and Subjects, to enter by Land or Sea into the Kingdoms, Countries, Provinces, Territories, Islands, Cities, Villages, Towns, walled or unwalled, fortified or unfortified, Harbours, Dominions or Jurisdictions whatsoever of the other, freely and securely, without any Licence or safe Conduct, general or special ; and there to pass and repass, to reside therein, or to travel through the same, and in the mean time to buy Provisions and all Necessaries ; and they shall be treated with all manner of Civility : It shall be lawful also for both the Confederates and their Subjects, Citizens and Inhabitants, to trade, traffic, and carry on Commerce in all Places where Commerce has been at any Time hitherto used, and
in

in whatsoever Goods and Merchandise they please, provided they are not contraband : and they shall have Liberty to import and export them at Discretion, the due Customs being always paid, and the Laws and Ordinances of both Kingdoms, whether relating to Merchandise, or to any other Right, always observed : Which Things being pre-supposed, the People, Subjects and Inhabitants of one Confederate shall have and hold in the Countries, Lands, Dominions and Kingdoms of the other, such full and ample Privileges, Exemptions, Liberties and Immunities, as any Foreigner whatsoever doth or shall enjoy in the said Dominions and Kingdoms on both Sides.

Art. XI. Altho' the foregoing Articles of this Treaty, and the Laws of Friendship do forbid, that either of the Confederates shall furnish any Aid or Supplies to the Enemies of the other, yet it is by no means to be understood that either Confederate, with his Subjects and Inhabitants, who is not a Party in a War, shall be restrained the Liberty of Trade and Navigation with the Enemies of the other Confederate, who is involved in such War ; provided only that no Goods called contraband, and especially Money, Provisions, Arms, Bombs, with their Fuzees and other Appurtenances, Fire-balls, Gunpowder, Matches, Cannon-ball, Spears, Swords, Lances, Pikes, Halberts, Guns, Mortars, Petards, Grenadoes, Musket-rests, Bandaliers, Saltpetre, Muskets, Musket-bullets, Helmets, Head-pieces, Breast-plates, Coats of Mails commonly called Cuirasses, and the like kind of Arms : Soldiers, Horses with their Furniture, nor Pistols, Belts, or any other Instruments of War ; nor Ships of War and Guard-ships, be carried to the Enemies of the other Confederate, on the Penalty of being made Prize without hopes of Redemption, if they are seized by the other Confederate : Nor shall either Confederate permit that the Rebels or Enemies of the other be assisted by any of his Subjects, or that any Ships be sold or lent to, or in any manner made use of by the Enemies or Rebels of the other to his Disadvantage or Detriment :

But.

But it shall be lawful for either of the Confederates, and his People or Subjects, to trade with the Enemies of the other, and to carry them any Merchandise whatsoever, not above excepted, without any Impediment; provided they are not carried to those Ports or Places which are besieged by the other; in which case they shall have free Leave either to sell their Goods to the Besiegers, or to repair with them to any other Port which is not besieged.

Art. XII. But lest such Freedom of Navigation and Passage of the one Confederate might be of Detriment to the other, while engaged in War by Sea or Land with other Nations, by concealing and conveying the Goods and Merchandises of the Enemies of the Confederate so engaged in War, under the Name of a Friend and Ally; for the avoiding of all Suspicion and Fraud of such sort, it is agreed, that all Ships, Carriages, Wares and Men belonging to the other Confederate, shall be furnished in their Journies and Voyages with safe Conducts commonly called Passports and Certificates, such as are under-written *verbatim*, signed and subscribed by the chief Magistrate of that Province and City, or by the chief Commissioners of the Customs and Duties, and specifying the true Names of the Ships, Carriages, Goods, and Masters of the Vessels, as also the exact Dates, without any Fraud or Collusion, together with such other Descriptions of that sort, as are expressed in the following Form of a Safe-conduct and Certificate. Wherefore if any Person shall affirm upon the Oath by which he is bound to his King, State or City, that he has given in true Accounts, and be afterwards convicted on sufficient Proof of any wilful Fraud therein, he shall be severely punished, and incur the Penalties of Perjury. [*Here follows the Passport.*]

Therefore when the Goods, Ships, or Men of either Confederate, or his Subjects and Inhabitants, shall meet in the open Sea, or in any Ports, Havens, Countries or Places whatsoever, with any Ships of War or Privateers,

Privateers, or any Subjects and Inhabitants of the other Confederate, after producing their Letters of Safe-Conduct and Certificates aforesaid, nothing farther shall be demanded of them, nor any Enquiry whatsoever made with respect to the Goods, Ships or Men, much less shall they be injured, damaged or molested, but they shall be suffered freely to prosecute their Voyage and Purpose. But in case that the said solemn and stated Form of a Certificate be not produced, or there be any other just and strong Cause of Suspicion, why a Ship ought to be searched, which shall only be deemed justifiable in such Case, and not otherwise; if the Goods of an Enemy are then found in such Ship of the Confederate, that Part only which belongs to the Enemy shall be made Prize, and what belongs to the Confederate shall be immediately restored: The same Rule shall likewise be observed, if the Goods of the other Confederate are found on board a Ship of an Enemy: If any thing be done by either Party contrary to the genuine Sense of this Article, both Confederates shall take Care, that the severest Punishments, due for the most heinous Crimes, be inflicted on such of their Subjects and Inhabitants as shall offend herein, for their Contempt and Transgression of the Royal Commands; and that full and immediate Satisfaction be made to the injured Party for all Damage and Expences (of which the most summary Proof shall be admitted) by the other Confederate, or his Subjects and Inhabitants, without any intricate Niceties of Law.

Nº. VIII. *TREATY of Amity, Commerce and Navigation, between Great-Britain and Russia, 2d of December, 1734.*

Art. II. There shall be an entire Freedom of Navigation and Commerce throughout all the Dominions of the two contracting Parties in Europe, where Navigation and Commerce are at this Time permitted, or shall be permitted hereafter by the contracting Parties to the Subjects of any other Nation.

Art.

Art. III. The Subjects of both contracting Parties may enter at all Times into all the Ports, Places or Towns of either of the contracting Parties, with their Ships, Vessels and Carriages, laden or unladen, into which the Subjects of any other Nation are permitted to enter, to trade or abide there ; and the Mariners, Passengers and Vessels, whether Russian or English, even though there should be any Subjects of any other strange Nation among the Crew, shall be received and treated in like manner as the most favoured Nation, and the Mariners and Passengers shall not be forced to enter into the Service of either of the contracting Parties which may have Occasion for their Service ; and the Subjects of both contracting Parties may buy all Kind of Necessaries, which they shall stand in Need of, at the current Price ; and repair and refit their Ships, Vessels or Carriages, and furnish themselves with all Manner of Provisions for their Subsistence and Voyage, abide and depart at their Pleasure, without Molestation or Impediment ; provided they conform themselves to the Laws and Ordinances of the respective States of the said contracting Powers, where they shall so arrive or continue.

Art. XIV. The Subjects of Great-Britain may bring by Sea or by Land into all or any of the Dominions of Russia, wherein the Subjects of any other Nation are permitted to trade, all Sorts of Goods and Merchandizes, whereof the Importation and Traffic are not prohibited ; and in like Manner the Subjects of Russia may bring into all or any of the Dominions of Great-Britain, wherein the Subjects of any other Nation are allowed to traffic, all Sorts of Merchandises of the Produce and Manufacture of the Dominions of Russia, whereof the Importation and Traffic are not prohibited, and likewise all Merchandises of the Produce or Manufacture of Asia ; provided that it is not actually prohibited by any Law now in Force in Great-Britain, and they may buy and export out of the Dominions of Great-Britain, all Manner of Goods and Merchandises ; which the Subjects of any other Nation may
buy

buy therein and export from thence, and particularly Gold and Silver wrought or unwrought, excepting the Silver coined Money of Great-Britain.

Art. XXVIII. The Subjects of both Parties shall be respected and treated in their respective Dominions in like Manner as the most favoured Nation, and the Subjects of Russia which shall come into England in order to learn Arts and Commerce there, shall be protected, favoured and instructed: Likewise if any Russian Vessels shall be met with out at Sea by any English Vessels, they shall in no wise be hindered or molested by them, provided they comport themselves in the British Seas in the accustomed Manner; but on the contrary they shall be favoured by them, and have all possible Assistance given them, and that in the very Ports or Havens belonging to the Dominions of Great-Britain.

Nº. IX. *TREATY of Alliance and Commerce between Great Britain and Denmark, 29th of November, 1669.*

Art. XVI. It shall be lawful for either Confederate, his People or Subjects, to carry on Trade with the Enemies of the other, and to carry and supply them with all manner of Goods (contraband Goods only excepted) without any Molestation, unless it be in Ports and Places actually besieged by the other Ally; in which case they shall be at Liberty either to dispose of their Goods to the Besiegers, or to convey them to some other Port or Place which is not besieged.

Art. XX. But lest this Liberty of Navigation and Passage for one Ally, his Subjects and Inhabitants, might, during a War which the other may be engaged in by Sea or by Land with any other State, be of Prejudice to such other Ally; and the Goods and Merchandise belonging to the Enemy be fraudulently concealed under the colourable Pretence of their being in Amity together; wherefore, in order to prevent all Frauds of that Sort, and to remove all Suspicion, it

is thought proper, that the Ships, Merchandises and Ship's Crew belonging to the other Ally, be furnished upon their Voyages with Passports and Certificates according to the Form and Tenor following, viz. [*Here follows the Passport.*]

Whenever therefore any Merchandises, Goods, Ships and Men of either Confederate, his Subjects or Inhabitants shall be met with in the open Sea, Streights, Ports, Roads, Lands, or in any Places whatsoever, by any public Ships of War or Privateers, or by the Men, Subjects or Inhabitants of the other Confederate, upon exhibiting the said Letters of Passport only, nothing further shall be required of them, nor shall any further Search or Enquiry be made in relation to the Goods Ships or Men; much less shall they be any ways injured or molested, but they shall be most freely dismissed in order to pursue their intended Course and Voyage: but in case this solemn and stated Form of the Passport and Certificate be not exhibited, or there appear other just and strong Cause of Suspicion, then such Ship ought to be visited; which however is to be understood to be allowed of in such Case only and not otherwise: If any thing shall be done by either Party against the other Confederate, contrary to the true and genuine Sense of this Article, both Confederates shall take care that their Subjects and Inhabitants respectively, who shall transgress therein, be severely punished, and that ample and immediate Satisfaction be made to the other Confederate, his Subjects and Inhabitants, for all Losses, Injuries and Charges so sustained or incurred.

F I N I S.

